

**Meeting of the Council of the  
Probate and Estate Planning Section of the  
State Bar of Michigan**

**October 13, 2018  
Troy, Michigan**

**Minutes**

I. Call to Order

The Chair of the Council, Marguerite Munson Lentz, called the meeting to order at 10:45 a.m.

II. Introduction of Guests

- A. Meeting attendees introduced themselves.
- B. The following officers and members of the Council were present: Marguerite Munson Lentz, Chair; Christopher A. Ballard, Chair Elect; David P. Lucas, Vice Chair; David L.J.M. Skidmore, Secretary; Mark E. Kellogg, Treasurer; Christopher J. Caldwell; Kathleen M. Goetsch; Angela M. Hentkowski; Robert C. Labe; Michael G. Lichterman; Katie Lynwood; Richard C. Mills; Lorraine F. New; Kurt A. Olson; James F. Anderton; Neal Nusholtz; Andrew W. Mayoras; and Nazneen H. Syed. A total of 18 Council officers and members were present, constituting a quorum.
- C. The following ex officio members of the Council were present: George W. Gregory; Nancy L. Little; and Thomas Sweeney.
- D. The following liaisons to the Council were present: Hon. David Murkowski (Michigan Probate Judges Association); Daniel W. Borst (Michigan Bankers Association); Susan L. Chalgian (SCAO); John R. Dresser (Business Law Section); Jeanne Murphy (ICLE); and James P. Spica (Uniform Law Commission).
- E. Others present: Ken Silver; Ron Knieser; and Erica Berezny.

III. Excused Absences

The following officers and members of the Council were absent: Hon. Michael L. Jaconette; Raj A. Malviya; Melisa M.W. Mysliwicz; Nathan R. Piwowarski; and Christine M. Savage.

IV. Lobbyist Report – Public Affairs Associates

Jim Ryan of Public Affairs Associates reported that (1) HB 6129, 6130, and 6131, the divided and directed trusteeship bills, were moved out of the judiciary committee and to the floor of the House; (2) following Nathan Piwowarski's testimony, HB 5362 and 5398, the certificate of trust bills, were referred out of committee and to the House floor; (3) the EPIC rewrite project resulted in the creation of 5 separate bills, 2 of which will be sponsored by Rep. Elder, 2 by Rep. Lucido, and 1 by Rep. Kesto; (4) the assisted productive technology bill is to be introduced in the Senate; and (5) HB 4741, the prenuptial agreement bill, previously passed by the House, was referred out

of the Senate judiciary committee, is on third reading on the Senate floor, and then will require House concurrence.

## V. Monthly Reports

- A. Minutes of Prior Council Meeting (David P. Lucas): It was moved and seconded to approve the Minutes of the September 8, 2018 meeting of the Council, as included in the meeting agenda materials and presented to the meeting. On voice vote, the Chair declared the motion approved.
- B. Treasurer's Report (Mark E. Kellogg): It was reported that the Budget Committee is working on the annual budget and that the expense reimbursement form was included in the meeting agenda materials.
- C. Chair's Report (Marguerite Munson Lentz): It was reported that an updated list of chairs and members of the Council's committees, and an updated list of liaisons to the Council, were included in the meeting agenda materials. Regarding vacant liaison positions, the Chair asked to be contacted by anyone interested in serving as the Council's liaison to law schools; the SBM Board of Commissioners selects its own liaison to the Council. The Chair has received inquiries from attorneys interested in becoming more involved with the Council, and so she asked to be contacted by committee chairs who need additional committee members. It was reported that a revised plan of work for the Council was included in the meeting agenda materials. It was reported that Nancy Little is the recipient of the 2018 Michael Irish Award.
- D. Committee on Special Projects (Katie Lynwood):

Katie Lynwood reported on the discussion at the Committee on Special Projects meeting. Kathleen Goetsch reviewed the terms of the uniform premarital agreements act, which the Premarital Agreement Legislation Ad Hoc Committee is working on. Andrew Mayoras discussed the work of the Lawyer Drafter/Beneficiary Ad Hoc Committee and sought the group's input as to the scope of the work.

## VI. Other Committees Presenting Oral Reports

### A. Amicus Curiae Committee

Andrew Mayoras reported that a request for an amicus brief from the Section has been requested in *In re Estate of Louis Henry Bitto III*, a matter in which leave to appeal is being sought from the Michigan Supreme Court. The Michigan Court of Appeals docket numbers are 339083 and 339507. The committee's motion is:

The Probate and Estate Planning Section declines to authorize the preparation and filing of an amicus brief in the matter before the Michigan Supreme Court, captioned, *In re Estate of Louis Henry Bitto III*, Court of Appeals Docket Nos. 339083 & 339507.

The Chair stated that since an application for consideration was made, the vote of the Council should be recorded. Following discussion, the Chair called the question, and the Secretary recorded the vote of 18 in favor of the motion, 0 opposed to the motion, 0 abstaining, and 5 not voting. The Chair declared the motion approved.

B. Guardianships, Conservatorships & End of Life Committee

Kathleen Goetsch reported the status of the work of the committee.

C. Tax Committee

Lorraine New reported on a tax nugget, which was included with the meeting materials.

D. Court Rules, Forms, and Procedures Committee

Susan Chalgian reported on the committee's review of certain proposed revisions to the Michigan Court Rules. The committee's report on the proposed Michigan Court Rule revisions is included with the meeting materials. The committee's motion is:

The Probate and Estate Planning Section objects to the proposed revisions to MCR 5.107(B)(1) (specifically, the addition of "previous mailings to the last known address have been returned at least two times as undeliverable"); 5.113(A) (specifically, the deletion of "substantially in the" and the addition of "filed on a"), 5.307(A) (specifically, the deletion of "submit to," the addition of "file with," and the deletion of "computation of"), and 5.307(C) (specifically, the deletion of "submit to" and the addition of "file the inventory with").

The Chair stated that since this would be a public policy position of the Section, the vote of the Council would have to be recorded. Following discussion, the Chair called the question, and the Secretary recorded the vote of 18 in favor of the motion, 0 opposed to the motion, 0 abstaining, and 5 not voting. The Chair declared the motion approved.

VII. Other Committees Presenting Written Reports Only

The Chair stated that there were written reports from the following committees:

A. Court Rules, Forms, and Proceedings Committee (regarding forms)

B. Divided and Directed Trusteeships Ad Hoc Committee

C. Liaison to the Uniform Law Commission

VIII. Other Business

None.

IX. Adjournment

Seeing no other matters or business to be brought before the meeting, the Chair declared the meeting adjourned at 11:17 a.m.

Respectfully submitted,  
David L.J.M. Skidmore, Secretary

COURT RULES, FORMS, AND PROCEEDINGS COMMITTEE

---

**To:** Probate and Estate Planning Council Members  
**From:** Melisa M. W. Mysliwiec, Chair  
**RE:** ADM 2002-37; Comments Due 11/2/18  
**Date:** October 10, 2018

---

One week ago, we were contacted about ADM 2002-37, which is a proposed court rule amendment that affects Chapter 5 of the Michigan Court Rules. The State Bar may adopt a position on this item, and if we wish to submit comments for consideration by the Board of Commissioners, we must do so by November 2, 2018.

Here is a link to ADM 2002-37:

2002-37: Proposed Amendments of MCR 1.109, 2.102, 2.104, 2.106, 2.107, 2.117, 2.119, 2.403, 2.503, 2.506, 2.508, 2.518, 2.602, 2.603, 2.621, 3.101, 3.104, 3.203, 3.205, 3.210, 3.302, 3.607, 3.613, 3.614, 3.705, 3.801, 3.802, 3.805, 3.806, 4.201, 4.202, 4.303, 4.306, 5.001, 5.104, 5.105, 5.107, 5.108, 5.113, 5.117, 5.118, 5.119, 5.120, 5.125, 5.126, 5.132, 5.162, 5.202, 5.203, 5.205, 5.302, 5.304, 5.307, 5.308, 5.309, 5.310, 5.311, 5.313, 5.402, 5.404, 5.405, 5.409, 5.501, and 5.784 and new rule 3.618

The proposed amendments are an expected progression necessary for design and implementation of the statewide electronic-filing system. These particular amendments will assist in implementing the goals of the project.

Our committee has reviewed the proposed changes and has the following comments:

- Rule 5.107: Other PapersDocuments Required to be Served

(A) Other PapersDocuments to be Served. The person filing a petition, an application, a sworn testimony form verified statement identifying heirs, supplemental sworn testimony form verified statement identifying heirs, a motion or objection, a response or objection, an instrument offered or admitted to probate, an accounting, or a sworn closing statement with the court must serve a copy of that document on interested persons. The person who obtains an order from the court must serve a copy of the order on interested persons.

(B) Exceptions.

(1) Service of the papersdocuments listed in subrule (A) is not required to be made on an interested person whose address or whereabouts, on diligent inquiry, is unknown, previous mailings to the last known address have been returned at least two times as undeliverable, or on an unascertained or unborn person. The court may excuse service on an interested person for good cause.

(2) [Unchanged.]

**Comment:**

The purpose for the proposed change to Rule 5.107(B)(1) related to "previous mailings to the last known address have been returned at least two times as undeliverable" is unclear. **We believe the change is unnecessary and should be removed.**

## COURT RULES, FORMS, AND PROCEEDINGS COMMITTEE

However, if the change remains, we believe these options should follow a colon to make clear that they are options, and that this new added language isn't explaining how an "unknown" address is determined to be unknown. Example: "is not required to be made on: (i) an interested person whose address or whereabouts, on diligent inquiry, is unknown; (ii) an interested person whose previous mailings to the last known address have been returned at least two times as undeliverable; or (iii) on an unascertained or unborn person."

- Rule 5.113: Form, Captioning, Signing, and Verifying Documents

(A) Forms of Documents Generally. The form, captioning, signing, and verifying of documents are prescribed in MCR 1.109(D) and (E). Documents must be ~~substantially in the~~ filed on a form approved by the State Court Administrative Office, if a form has been approved for the use. An application, petition, inventory, accounting, proof of claim, or proof of service must be verified in accordance with MCR 1.109(D)(3).

**Comment:**

The rule previously required that documents must be "substantially in the form approved by the State Court Administrative Office," but the proposed amendment changes this to require documents be "filed on a form approved by the State Court Administrative Office." This is a major change. There is not a SCAO form that fits each and every unique situation. We believe this proposed amendment will hinder attorneys' ability to efficiently advocate on behalf of their clients. **We believe the change should be removed.**

**Specifically, "substantially in the" should not be deleted, and the addition of "filed on a" should be deleted.**

- Rule 5.307: Requirements Applicable to All Decedent Estates

(A) Inventory Fee. Within 91 days of the date of the letters of authority, the personal representative must ~~submit to~~ file with the court the information necessary for ~~computation of~~ the probate inventory fee. The inventory fee must be paid no later than the filing of the petition for an order of complete estate settlement under MCL 700.3952, the petition for settlement order under MCL 700.3953, or the sworn statement under MCL 700.3954, or one year after appointment, whichever is earlier.

\*\*\*

(C) Notice to Personal Representative. At the time of appointment, the court must provide the personal representative with written notice of information to be provided to the court. The notice should be substantially in the following form or in the form specified by MCR 5.310(E), if applicable:

COURT RULES, FORMS, AND PROCEEDINGS COMMITTEE

**“Inventory Information:** Within 91 days of the date of the letters of authority, you must ~~submit to~~ **file the inventory with** the court the information necessary for computation of the probate inventory fee. You must also provide the name and address of each financial institution listed on your inventory at the time the inventory is presented to the court. The address for a financial institution shall be either that of the institution’s main headquarters or the branch used most frequently by the personal representative.

**Comment:**

The proposed amendment creates a substantive change in the law and would be in direct conflict with MCL 700.3706(2). The proposed amendment changes (A), which deals with the Inventory Fee, to require information necessary for the probate inventory fee to be filed with the court as opposed to "submitted to" the court for "computation of" the inventory fee. Further (C), which sets forth the notices to the personal representative, is amended to say that within 91 days of the date of the letters of authority, you must file the inventory with the court, as opposed to "submit" information necessary for computation of the fee.

MCL 700.3706(2) does not require the Inventory to be filed. It states that a personal representative "may" file an original Inventory with the court, and that the personal representative "shall submit" information necessary to calculate the probate inventory fee.

700.3706: Duty of personal representative; inventory and appraisalment.

\*\*\*

(2) The personal representative shall send a copy of the inventory to all presumptive distributees and to all other interested persons who request it, and may also file the original of the inventory with the court. The personal representative shall submit to the court on a timely basis information necessary to calculate the probate inventory fee.

The proposed amendment to Rule 5.307 would make probate Inventories a part of the public record.

**This change should be removed. Specifically, in (A), "submit to" and "computation of" should not be deleted, and the addition of "file with" should be deleted. In (C), "submit to" should not be deleted, and the addition of "file the inventory with" should be deleted.**

- Rule 5.310: Supervised Administration

(A)-(B) [Unchanged.]

COURT RULES, FORMS, AND PROCEEDINGS COMMITTEE

---

(C) Filing ~~Papers~~Documents With the Court. The personal representative must file the following additional ~~papers~~documents with the court and serve copies on the interested persons:

(1) Inventory. The personal representative must file an inventory as prescribed by MCR 5.307(A).

~~(a) Administration Commenced Supervised. If supervised administration is ordered at the commencement of the estate administration, the personal representative must file the inventory within 91 days of the date of the letters of authority.~~

~~(b) Administration Commenced Without Supervision. If supervised administration is ordered after a personal representative has been appointed, the court must specify in the order a time for that personal representative to file the inventory.~~

(2)-(6) [Unchanged.]

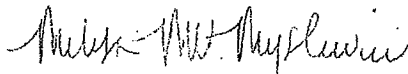
(7) Such other ~~papers~~documents as are ordered by the court.

**Comment:**

As opposed to explaining when an Inventory must be filed in a supervised administration, the proposed amendment strikes that language and states that "the personal representative must file an inventory as prescribed by MCR 5.307(A)." **Since we reject the proposed amendment to Rule 5.307(A) and (C), we also reject the proposed amendment to Rule 5.310(C)(1). Specifically, the language added to (C)(1) should be deleted and subsections (a) and (b) of (C)(1) should not be deleted.**

**We request that the Council adopt the above comments as its public policy opinion and that the public policy opinion be submitted to the State Bar of Michigan's Board of Commissioners via a template located at the Public Policy Resource Center, on or before November 2, as required for all comments.**

Respectfully submitted,



Melisa M. W. Mysliwicz