I. Call to Order – The meeting was called to order at 10:50 am by Nancy Little who as the immediate past Chairperson, with the consent of all present, acted as chair in absence of the Chairperson, following a one and half hour meeting of the committee on special projects and a twenty minute annual meeting in which the new officers were elected.

II. Council Members

A. Excused Absences

Robin D. Ferriby
Harold G. Schuitmaker, Chairperson
James B. Steward
Robert P. Tiplady, II

B. Council Members Present

Nancy L. Little, Ex-Officio
Douglas G. Chalgian, Chairperson-Elect
George W. Gregory, Vice-Chairperson
Mark Harder, Secretary
Marilyn Lankfer, Treasurer
Susan M. Allan
Josh Ard
Ellen Sugrue Hyman
Shaheen I. Imami
J. David Kerr
Hon. David K. Murkowski
Amy Morrissey
Patricia M. Ouellette
Rebecca A. Schmelz
Richard J. Siriani
James B. Steward
Thomas F. Sweeney
Robert M. Taylor
Marlaine C. Teahan
Robert P. Tiplady, II
C. Ex-Officios Present

Nancy L. Little
Michael J. McClory
Douglas A. Mielock

III. Others Present

Hon. Darlene A. O'Brien
Jeanne Murphy
Constance Brigman
Derek Walters
Tess Sullivan
Daniel P. Marsh
Kathy Goetsch
Mary Schrauben
Rhonda Clark – Kreurer
Melisa Mysliwiec
Christopher Ballard
Dan Cogan
Lorraine F. New

IV. Minutes of the Council Meeting of June 6, 2009 were approved upon a motion duly made and seconded. Tess Sullivan commented that she thought the draft minutes should be posted on the web site and made other suggestions for improving communications.

V. Treasurer's Report – Mark K. Harder – submitted his last written report (Attachment 1) which was accepted upon a motion duly made and seconded and approved by all present. Mark Harder commented on the Michigan Trust Code.

VI. Chairperson's Report – Nancy L. Little

Nancy L. Little thanked everyone for making the year a good one. She observed that there are a lot of bright people who attend Council meetings and she learned something at every meeting she attended.

VII. Report of Committee on Special Projects – Amy M. Morrissey/Richard J. Siriani

The Committee on Special Projects reported on four separate subject matters.

A. The Court Rules as reported by the Rules Committee and modified by the Committee on Special Projects were upon a motion duly made and seconded recommended as amended during the meeting of the Committee on Special Projects. The
general feeling is that the bifurcated route (Circuit Court and the Michigan Court of Appeals) of appeals is an issue. The Probate Judges Association may have input on that special issue as it is touched on in the proposed Rules. Because of special concerns about time limits, those present consented to the officers making further amendments as recommended by Marlaine Teahan, Chair of the Rules Committee. (See Attachment 2.)

VII. Standing Committee Reports

A. Internal Governance

1. Budget – George W. Gregory – no report
2. Bylaws – Marilyn A. Lankfer – no report
3. Michael Irish Award – Brian V. Howe – no report
5. Nominations – Michael McClory on behalf of the Nominating Committee nominated Hon. Darlene O’Brien to fill the term of Hon. Kathryn A. George who resigned. Nominations were solicited from the floor. There were none.
6. Relations with the State Bar – no report.

B. Education & Advocacy Services for Section Members

1. Amicus Curiae – Ellen Sugrue Hyman circulated a written policy for the Amicus Curiae committee. (See Attachment 3.) A discussion followed. Upon a motion duly made and seconded and with the approval of all present, the committee’s proposed policy was accepted. Tess Sullivan suggested that the policy should be posted on the Section website and there was total agreement that it should be.

2. Continuing Education & Annual Probate Institute – George Gregory reported that he has been working with ICLE and there is a tentative schedule.

3. Section Journal – Nancy L. Little reported the Journal is becoming more green and a printed version of the next issue will only go to attorneys admitted to the State Bar of Michigan before 1995, the others will receive their copies by e-mail. She is looking into restricting access to those persons who pay dues to the Section. Lorraine New commented that the Taxation Section did this, but they have a coordinator who has to get passwords for members who forget them and the like. George Gregory reported that the Taxation Section gets 5% of its budget from Lexis-Nexis because of the Michigan Tax Lawyer. Nancy Little stated she would look
into that. Nancy Little reported that the focus on the final issue of the year will be on the new Michigan Trust Code.

5. Pamphlets – Ellen Sugrue Hyman – no report

C. Legislation and Lobbying

1. Legislation – no report.

2. Power of Attorney Act – Power of Attorney Act - Daniel P. Marsh in addition to submitting a written report (see Attachment 4) orally reported on HB 5196, a reintroduction of last years bill HB 4180. He stated that both are in part modeled after the Uniform Power of Attorney Act. HB 5196 is part of a legislative package identified as legislation to stop Elder Abuse. Many other groups (Probate Judges, Elder Law, Bankers Association) opposed HB 4180 for various reasons and it is likely those same criticisms will be made against HB 5196 since it is the same bill. The Council opposed the proposed statutory form in HB 4180 (2007). HB 5196 has the same form. He stated he was looking for guidance on what the task of the committee should be at this point. Dan Cogan suggested that because the UPOAA keeps coming up in the legislature, they should start with the UPOAA as a framework, discuss the provisions and bring the committees proposed solutions with a complete disclosure similar to how the Michigan Trust Code Committee did. A suggestion was made to reach out to the financial institutions group on this issue. An extended discussion followed which Nancy Little summarized as follows:

a. Daniel P. Marsh should coordinate with our lobbyist about the pending bills.

b. The Committee should look at the uniform act, compare to existing Michigan law, identify hot spots and make suggestions.

c. Like other Committees of the Council, it should first address such matters with the Committee on Special Projects.

d. Daniel P. Marsh should check with the incoming chair, Harold Schuitmaker, about this course of action.


D. Ethics, Professionalism and Standards

1. Ethics – J. David Kerr – no report

2. Unauthorized Practice & Multidisciplinary Practice – no report
3. Specialization and Certification – 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. A discussion of the division of labor with the Rules Committee took place. The consensus was that the Rules Committee is reactive. Based on earlier discussions in the meeting, it appears that this Committee should look at the issues involving jury trials in the Probate Court and the proper course of appeals from the Probate Court.

2. Uniformity of Practice – no report.

F. Practice Issues, Related Areas & Liaisons

2. Transfer Tax – Thomas F. Sweeney reported that that morning’s issue of the Wall Street Journal had an article about a possible tax bill and that the future of the Estate Tax is cloudy.
3. Guardianships and Conservatorships – Constance Brigman – 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 – no report
9. Tax and Taxation Section Liaison – Lorraine F. New reported on various activities and that the Taxation Section is both getting involved in the legislative process and is considering hiring a lobbyist.
10. State Bar Liaison – Richard J. Siriani – the client protection fund is looking at the area of the unauthorized practice of law.
11. Court Rules and Forms Committee Liaison – Marlaine C. Teahan – no report, but see the Committee on Special Projects about what a
12. Trust Institutions and Liaison with Michigan Bankers Association – Susan Allan, Chair – reported that the MBA is looking at the total repeal of the Michigan Inheritance Tax. At this time there are still deferred Michigan Inheritance Taxes which are a problem for fiduciaries and others. The MBA is also looking at powers of attorney with a couple of alternatives one of which is a list of financial powers. There are concerns about the acceptance of powers of attorney. The MBA wants something workable for both large and small banks.

X. Other Business – J. David Kerr likes the idea of being able to preserve tenancy by the
entireties in trusts. Nancy Little referred the matter to the Legislation Committee.

XI. Hot Topics - none

XII. Adjournment – With the consent of all present the meeting adjourned at 12:25 pm.

Respectfully Submitted

George W. Gregory, Secretary
Attachment 1 – Treasurer’s Report
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<th>Revenue</th>
<th>June 2009 Actual</th>
<th>July 2009 Actual</th>
<th>August 2009 Actual</th>
<th>Year to Date Actual</th>
<th>2009 Budget</th>
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<th>Year to Date Actual</th>
<th>2009 Budget</th>
<th>Variance</th>
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Increase

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<th>Year to Date Actual</th>
<th>2009 Budget</th>
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**Additional Information**

Fund Balance

$123,706
Attachment 2 – Forms and Rules
Members of the Michigan Trust Code Rules Subcommittee:
   Shaheen Imami
   Doug Mielock
   Judge David Murkowski
   Tess Sullivan
   Marlaine Teahan
   Rob Tiplady

Advisors:
   Mark Harder
   Marilyn Lankfer

Additional Reviewers of Final Proposed Rules:
   Susan Allan
   Judge Phil Harter
   Mike McClory
   Rebecca Schnelz
   Richard Siriani
   Jim Steward

Goal of the MTC Rules Subcommittee:
   Develop a Joint Submission with the Michigan Probate Judge’s Association (MPJA) for proposal to the Supreme Court Administrative Office (SCAO) updating the Michigan Court Rules (MCRs) so that they are consistent with the Michigan Trust Code (MTC) by the Effective Date of the MTC (April 1, 2010).

Progress Report

   On September 10, 2009, the MTC Rules Subcommittee approved a final draft of proposed amendments to MCRs for review by the Probate & Estate Planning Council at their September 19, 2009 meeting. If these proposed rules are approved by Council, they will be submitted by the Hon. David Murkowski to the MPJA at the annual meeting on September 22, 2009. If after review of the proposed rules by the MPJA, modifications are suggested, the Subcommittee will meet again to review the proposed changes. If changes are indeed required, it is requested that Council authorize the officers of Council to discuss and approve (by meeting, phone or email) any further changes proposed by the MTC Rules Subcommittee. If no further changes are required, the proposed rules, drafted by the MTC Rules Subcommittee, will be packaged as and submitted to SCAO as a Joint Submission by the MPJA and the Probate & Estate Planning Council.
Once at SCAO, the Joint Submission must get onto the Agenda for the Court’s next monthly administrative meeting. The next step, after being considered at the Court’s monthly administrative meeting, is for the proposed rules to be published for public comment for 90 days. Thereafter, a public hearing date will be set. After hearing, if approved, an effective date will be set for the new rules. Typically, the Court has just three effective dates for new rules. If all goes according to plan, the next effective date would be May 1, 2010; however, since the proposed rules are tied to the Effective Date of the MTC, we will be seeking special Court approval to have an April 1, 2010 effective date for the proposed rules.

Summary of Proposed Rule Changes

**MCR 5.105, Manner and Method of Service**
- MCR 5.105(B)(4). An addition of email service, like that found in MCR 2.107(C)(4) is added. Instead of repeating MCR 2.107’s language, reference is made to the court rule found in Chapter Two Incorporating the provisions into Chapter Five.
- MCR 5.105(D)(3). Language is changed to provide service on all GALs when service is required pursuant to MCR 5.105(D), instead of a previously limited class of GALs.

**MCR 5.125, Interested Persons Defined**
- MCR 5.125(B)(3). The term qualified trust beneficiary, as described in MCL 700.7103(g)(i), is substituted for the term current trust beneficiary (which will no longer be used in EPIC).
- MCR 5.125(C)(1)(b). The term qualified trust beneficiary, as described in MCL 700.7103(g)(i), is substituted for the term current trust beneficiary (which will no longer be used in EPIC).
- MCR 5.125(C)(1)(e). The citation to the definition of a revocable trust is updated to the correct section of EPIC.
- MCR 5.125(C)(2)(c). The citation to the definition of a revocable trust is updated to the correct section of the EPIC.
- MCR 5.125(C)(4)(e). Qualified trust beneficiaries, as described in MCL 700.7103(g)(i), are added to those who are identified as interested persons in a petition of surety for discharge from further liability. Subrules MCR 5.125(C)(4)(f and g) are renumbered accordingly.
- MCR 5.125(C)(6)(f) and (g). The settlor of a revocable trust, or those persons who are entitled to be reasonable informed, as referred to in MCL 700.7603(2), if the petitioner has a reasonable basis to believe the settlor is an incapacitated individual (subrule (f)), and the current trustee (subrule (g)), are added to those who are identified as interested persons in a proceeding for examination of an account of a fiduciary. Subrules MCR 5.125(C)(6)(h and i) are renumbered accordingly.
- MCR 5.125(C)(32). This is a new proposed subrule. The former MCR 5.125(C)(32) will be renumbered as MCR 5.125(C)(33). Subject to the representation provisions contained in Part 3 of Article VII of EPIC, the new subrule (32) identifies the persons interested in the modification or termination of a noncharitable irrevocable trust (See MCL 700.7411).
- MCR 5.125(C)(33). This subrule is renumbered from MCR 5.125(C)(32) to (C)(33). Subject to the representation provisions contained in Part 3 of Article VII of EPIC, this subrule is expanded to include all persons that should get notice of proceedings affecting a trust, other than already covered by (C)(6), (C)(28) and (C)(32). Note that former MCR 5.125(C)(32)(d) is being deleted. Since the new MCR 5.125(C)(33) is exhaustive, adding “other persons” may lead to confusion and lead to inclusion of persons who have no actual standing. If there actually are “other persons” that should receive notice, that are not listed in MCR 5.125(C)(33), a Court could direct notice be given under MCR 5.125(E).
MCR 5.201, Applicability

- MCR 5.201 was modified to carve out the application of the Subchapter to trusts and trustees for MCR 5.204 and MCR 5.208.
- While arguably not true, MCR 5.201 currently states that all MCRs contained in Subchapter 5.200 do not apply to trusts or trustees. MCR 5.204 does apply to trusts inasmuch as it incorporates a reference to MCL 700.1309 which gives Courts the power to appoint special fiduciaries for trusts. In addition, a new MCR 5.208 Notice to Creditors was added that applies to both estates and trusts.

MCR 5.208, Notice to Creditors, Presentment of Claims

- This is a new Rule that replaces MCR 5.306 and MCR 5.503.
- This Rule incorporates provisions found in MCR 5.306 for estates (see MCR 5.208(A, B, D, E and F)) and incorporates the law applicable to trustees from the Michigan Trust Code found in MCL 700.7608 (see MCR 5.208(C, parts of D, E and F).

MCR 5.306, Notice to Creditors, Presentment of Claims

- This Rule is deleted and replaced by MCR 5.208.

MCR 5.501, Trust Proceedings in General

- (A) is modified to reflect a renumbering of a section in EPIC.
- (C & D) The language deleted was a distraction from the purpose of the subrules. Language that is repetitive of Trust Code language was deleted if not necessary to understand the purpose of the rule.
- (E) This subrule was modified to only leave in the rule how a successor trustee that is appointed by a court qualifies to serve. References to how a successor trustee who is nominated in a trust qualifies is found either in the terms of the trust or in MTC 7701. The term “current trust beneficiary” was changed to “qualified trust beneficiary” described in MCL 700.7103(g)(i). While MCL 700.7913 sets forth the requirements for a Certificate of Trust, the last sentence in (E) provides an alternative way to identify the incumbent trustee and the status of a bond, if any. Section 7913 does not state that it is intended to be the exclusive manner of providing affidavits regarding the identity of a trustee and the status of a bond. The last sentence in subrule (E) is retained to maintain existing law even though its provisions are not encompassed in MCL 700.7913. The word “document” was removed because it does not add anything to the understanding of the sentence and the Trust Code references trust terms, not trust documents.
- (F) This rule is still needed even though it’s been almost 10 years since EPIC’s effective date.

MCR 5.503, Notice to Creditors By Trustee of Revocable Inter Vivos Trust. This Rule is deleted and replaced by MCR 5.208.

MCR 5.801, Appeals to Other Courts

- MCR 5.801(B)(1) was added and MCR 5.801(B)(2) was modified to clarify that both forms of actions, civil actions and proceedings (MCR 5.501(A)), are final orders that are appealable as a matter of right.
- MCR 5.801(B)(2) is changed to reflect the fact that EPIC no longer refers to testamentary trusts but refers to those types of trusts as trusts created under a will.
- MCR 5.801(B)(2). This subrule enumerates the types of Orders that are appealable of right to the Court of Appeals notwithstanding the fact that the law, recited below, indicates that all final
orders affecting the rights or interests of any interested person in an estate or trust are appealable as a matter of right to the court of appeals. One could argue that a list is not necessary; however, since a list is currently in the Court Rules, the Subcommittee thought it was important to maintain the list and expand it to include a fuller listing of final Orders that are made by Probate Courts in their application of EPIC.

- MCR 5.802(8)(2)(a-e) were expanded as indicated above in an effort to have a complete listing of the types of final orders that are appealable of right to the Court of Appeals, including:
  - (a) added reference to a trust protector, as defined in MCL 700.7103(n);
  - (c) determining the validity of a governing instrument is added (defined at MCL 700.1104(k));
  - (d) governing instrument replaces references to wills and trusts;
  - (e) an order denying a settlement is added and governing instrument replaces references to wills and trusts;
  - (f) is a new subrule that relates to MCL 700.7411 and MCL 700.7415 and the Court’s power to reform, terminate or modify a trust;
  - (g) is a new subrule that relates to the division or consolidation of trusts;
  - (h-e) are renumbered due to new subrules (f and g);
  - (h) adds in the denial of a discharge of a surety on a bond;
  - (i) adds in the disallowing or rejecting of claims;
  - (l) deletes reference to a right to remain in a dwelling; an RPC holdover; such right is not part of EPIC;
  - (n) adds in determining beneficiaries;
  - (o) updates the language to terms used currently in EPIC; this subrule refers to determining title to rights or interests in property instead of title or claims in property; reference to a trust beneficiary’s rights appears throughout the Trust Code and the clause “rights and interests of a trust beneficiary” appears in MCL 700.1105. Appeals allowed by MCL 600.861 include final orders “affecting the rights or interests of any interested person in an estate or trust.”
  - (u) adds in appeals related to directing or denying the making as well as the repayment of distributions;
  - (y) adds in reference to surcharging or refusing to surcharge a trust protector as defined in MCL 700.7103(n);
  - (z) expands the rule related to authorizing federal estate tax apportionment to relate instead more generally to determining or directing payment or apportionment of taxes;
  - (old y) deletes reference to determining or directing payment of inheritance taxes, if inheritance taxes return to Michigan law, this subrule will be covered by the amendment to (z);
  - (ee) adds in a new reference to allowing or disallowing a trustee’s change in the principal place of administration of a trust.

Michigan Law related to appeals of right to the court of appeals from Probate Court:

- **600.309 Appeals as of right; appeals by leave of court.**
  Sec. 309.

  Except as provided in section 308, all appeals to the court of appeals from final judgments or decisions permitted by this act shall be a matter of right. All other appeals from other judgments or orders to the court of appeals permitted by statute or supreme court rule shall be by right or by leave as provided by the statute or the rules promulgated by the supreme court.
• **600.308 Jurisdiction on appeals from orders and judgments.**
  Sec. 308.
  (1) The court of appeals has jurisdiction on appeals from the following orders and
  judgments which shall be appealable as a matter of right:
  ****
  (b) Those orders of the probate court from which an appeal as of right may be taken
  under section 861.

• **600.861 Appeal of orders as matter of right.**
  Sec. 861.
  A party to a proceeding in the probate court may appeal the following orders as a
  matter of right to the court of appeals:
  (a) A final order affecting the rights or interests of any interested person in an estate
  or trust.

**MCR 5.802, Appellate Procedure: Stays Pending Appeal**
• MCR 5.802(8) deletes a statement that the appeal is not de novo. It was determined that
  inclusion of this sentence is not necessary.
Probate & Estate Planning Council – MTC Forms Committee Report
September 19, 2009
Marlaine C. Teahan, Chair

PC 610, Registration of Trust is the one form change precipitated by the passage of the Michigan Trust Code (MTC) legislation. The form was modified to track the language used in the MTC. The revisions have been approved by the SCAO Forms Committee, Probate Section, when it met on September 3, 2009, with an effective date of the new form being April 1, 2010.

Many other forms were reviewed this year by the SCAO Forms Committee, Probate Section. Several Committee members commented that this was the largest number of forms reviewed in one year that they could remember. Included in this year’s review were:

7 forms with minor revisions to correct spelling, citations, grammar, etc.;
18 general and estate forms;
19 guardianship and conservatorship forms; and
9 mental health forms.

Once the revisions are finalized by SCAO, a complete report and review of the form changes will be presented to Council.
MCR 5.105 Manner and Method of Service

(A) Manner of Service.

(1) Service on an interested person may be by personal service within or without the State of Michigan.

(2) Unless another method of service is required by statute, court rule, or special order of a probate court, service may be made to the current address of an interested person by registered, certified, or ordinary first-class mail. Foreign consul and the Attorney General may be served by mail.

(3) An interested person whose address or whereabouts is not known may be served by publication, if an affidavit or declaration under MCR 5.114(B) is filed with the court, showing that the address or whereabouts of the interested person could not be ascertained on diligent inquiry. Except in proceedings seeking a determination of a presumption of death based on absence pursuant to MCL 700.1208(2), after an interested person has once been served by publication, notice is only required on an interested person whose address is known or becomes known during the proceedings.

(4) The court, for good cause on ex parte petition, may direct the manner of service if

(a) no statute or court rule provides for the manner of service on an interested person, or

(b) service cannot otherwise reasonably be made.

(B) Method of Service.

(1) Personal Service.

(a) On an Attorney. Personal service of a paper on an attorney must be made by

(i) handing it to the attorney personally;

(ii) leaving it at the attorney’s office with a clerk or with some person in charge or, if no one is in charge or present, by leaving it in some conspicuous place there, or by electronically delivering a facsimile to the attorney’s office;

(iii) if the office is closed or the attorney has no office, by leaving it at the attorney’s usual residence with some person of suitable age and discretion residing there; or

(iv) sending the paper by registered mail or certified mail, return receipt requested, and delivery restricted to the addressee; but service is not made for purpose of this subrule until the attorney receives the paper.

(b) On Other Individuals. Personal service of a paper on an individual other than an attorney must be made by

(i) handing it to the individual personally;

(ii) leaving it at the person’s usual residence with some person of suitable age and discretion residing there; or

(iii) sending the paper by registered mail or certified mail, return receipt requested, and delivery restricted to the addressee; but service is not made for purpose of this subrule until the individual receives the paper.

(c) On Persons Other Than Individuals. Service on an interested person other than an individual must be made in the manner provided in MCR 2.105(C)–(G).
(2) **Mailing.** Mailing of a copy under this rule means enclosing it in a sealed envelope with first-class postage fully prepaid, addressed to the person to be served, and depositing the envelope and its contents in the United States mail. Service by mail is complete at the time of mailing.

(3) **Publication.** Service by publication must be made in the manner provided in MCR 5.106.

(4) **Email.** Unless otherwise limited or provided by this court rule, parties to a civil action or interested persons to a proceeding may agree to service by email in the manner provided in and governed by MCR 2.107(C)(4).

(C) **Petitioner, Service Not Required.** For service of notice of hearing on a petition, the petitioner, although otherwise an interested person, is presumed to have waived notice and consented to the petition, unless the petition expressly indicates that the petitioner does not waive notice and does not consent to the granting of the requested prayers without a hearing. Although a petitioner or a fiduciary may in fact be an interested person, the petitioner need not indicate, either by written waiver or proof of service, that the petitioner has received a copy of any paper required by these rules to be served on interested persons.

(D) **Service on Persons Under Legal Disability or Otherwise Legally Represented.** In a guardianship or conservatorship proceeding, a petition or notice of hearing asking for an order that affects the ward or protected individual must be served on that ward or protected individual if he or she is 14 years of age or older. In all other circumstances, service on an interested person under legal disability or otherwise legally represented must be made on the following:

1. The guardian of an adult, conservator, or guardian ad litem of a minor or other legally incapacitated individual, except with respect to:

   a. a petition for commitment or

   b. a petition, account, inventory, or report made as the guardian, conservator, or guardian ad litem.

2. The trustee of a trust with respect to a beneficiary of the trust, except that the trustee may not be served on behalf of the beneficiary on petitions, accounts, or reports made by the trustee as trustee or as personal representative of the settlor's estate.

   (3) The guardian ad litem of any unascertained or unborn person.

4. A parent of a minor with whom the minor resides, provided the interest of the parent in the outcome of the hearing is not in conflict with the interest of the minor and provided the parent has filed an appearance on behalf of the minor.

5. The attorney for an interested person who has filed a written appearance in the proceeding. If the appearance is in the name of the office of the United States attorney, the counsel for the Veterans’ Administration, the Attorney General, the prosecuting attorney, or the county or municipal corporation counsel, by a specifically designated attorney, service must be directed to the attention of the designated attorney at the address stated in the written appearance.

6. The agent of an interested person under an unrevoked power of attorney filed with the court. A power of attorney is deemed unrevoked until written revocation is filed or it is revoked by operation of law.

For purposes of service, an emancipated minor without a guardian or conservator is not deemed to be under legal disability.

(E) **Service on Beneficiaries of Future Interests.** A notice that must be served on unborn or unascertained interested persons not represented by a fiduciary or guardian ad litem is considered served on the unborn or unascertained interested persons if it is served as provided in this subrule.
(1) If an interest is limited to persons in being and the same interest is further limited to the happening of a future event to unascertained or unborn persons, notice and papers must be served on the persons to whom the interest is first limited.

(2) If an interest is limited to persons whose existence as a class is conditioned on some future event, notice and papers must be served on the persons in being who would comprise the class if the required event had taken place immediately before the time when the papers are served.

(3) If a case is not covered by subrule (E)(1) or (2), notice and papers must be served on all known persons whose interests are substantially identical to those of the unascertained or unborn interested persons.

History

5.105 Am. eff. Apr 1, 1992; Apr 1, 2000, on interim basis and adopted eff. Jan 1, 2002; am. eff. May 1, 2009

MCR 5.125 Interested Persons Defined

(A) Special Persons. In addition to persons named in subrule (C) with respect to specific proceedings, the following persons must be served:

(1) The Attorney General must be served if required by law or court rule. The Attorney General must be served in the specific proceedings enumerated in subrule (C) when the decedent is not survived by any known heirs, or the protected person has no known presumptive heirs.

(2) A foreign consul must be served if required by MCL 700.1401(4) or court rule. An attorney who has filed an appearance for a foreign consul must be served when required by subrule (A)(5).

(3) On a petition for the appointment of a guardian or conservator of a person on whose account benefits are payable by the Veterans’ Administration, the Administrator of Veterans’ Affairs must be served through the administrator’s Michigan district counsel.

(4) A guardian, conservator, or guardian ad litem of a person must be served with notice of proceedings as to which the represented person is an interested person, except as provided by MCR 5.105(D)(1).

(5) An attorney who has filed an appearance must be served notice of proceedings concerning which the attorney’s client is an interested person.

(6) A special fiduciary appointed under MCL 700.1308.

(7) A person who filed a demand for notice under MCL 700.3205 or a request for notice under MCL 700.5104 if the demand has not been withdrawn, expired, or terminated by court order.

(B) Special Conditions for Interested Persons.

(1) Claimant. Only a claimant who has properly presented a claim and whose claim has not been disallowed and remains unpaid need be notified of specific proceedings under subrule (C).

(2) Devisee. Only a devisee whose devise remains unsatisfied need be notified of specific proceedings under subrule (C).

(3) Trust as Devisee. If either a trust or a trustee is a devisee, the trustee is the interested person. If no trustee has qualified, the interested persons are the current qualified trust beneficiaries described in MCL
700.7103(a)(i) and the nominated trustee, if any.

(4) **Father of a Child Born out of Wedlock.** Except as otherwise provided by law, the natural father of a child born out of wedlock need not be served notice of proceedings in which the child's parents are interested persons unless his paternity has been determined in a manner provided by law.

(5) **Decedent as Interested Person.** If a decedent is an interested person, the personal representative of the decedent's estate is the interested person. If there is no personal representative, the interested persons are the known heirs of the estate of the decedent, and the known devisees. If there are no known heirs, the Attorney General must receive notice.

(C) **Specific Proceedings.** Subject to subrules (A) and (B) and MCR 5.105(E), the following provisions apply. When a single petition requests multiple forms of relief, the petitioner must give notice to all persons interested in each type of relief:

(1) The persons interested in an application or a petition to probate a will are the

(a) devisees,

(b) nominated trustee and current qualified trust beneficiaries described in MCL 700.7103(a)(i) of a trust created under the will,

(c) heirs,

(d) nominated personal representative, and

(e) trustee of a revocable trust described in MCL 700.7604(4)7605(1).

(2) The persons interested in an application or a petition to appoint a personal representative, other than a special personal representative, of an intestate estate are the

(a) heirs,

(b) nominated personal representative, and

(c) trustee of a revocable trust described in MCL 700.7604(4)7605(1).

(3) The persons interested in a petition to determine the heirs of a decedent are the presumptive heirs.

(4) The persons interested in a petition of surety for discharge from further liability are the

(a) principal on the bond,

(b) co-surety,

(c) devisees of a testate estate,

(d) heirs of an intestate estate,

(e) qualified trust beneficiaries, as referred to in MCL 700.7103(a)(i).

(f) protected person and presumptive heirs of the protected person in a conservatorship, and

(g) claimants.
(5) The persons interested in a proceeding for spouse’s allowance are the
(a) devisees of a testate estate,
(b) heirs of an intestate estate,
(c) claimants,
(d) spouse, and
(e) the personal representative, if the spouse is not the personal representative.

(6) The persons interested in a proceeding for examination of an account of a fiduciary are the
(a) devisees of a testate estate, and if one of the devisees is a trustee or a trust, the persons referred to in MCR 5.125(B)(3),
(b) heirs of an intestate estate,
(c) protected person and presumptive heirs of the protected person in a conservatorship,
(d) ward and presumptive heirs of the ward in a guardianship,
(e) claimants,
(f) settlor of a revocable trust, or those persons who are entitled to be reasonably informed, as referred to in MCL 700.7603(2), if the petitioner has a reasonable basis to believe the settlor is an incapacitated individual,
(g) current trustee,
(h) current qualified trust beneficiaries described in MCL 700.7103(a)(i), for in a trust accounting, and
(i) other persons whose interests would be adversely affected by the relief requested, including insurers and sureties who might be subject to financial obligations as the result of the approval of the account.

(7) The persons interested in a proceeding for partial distribution of the estate of a decedent are the
(a) devisees of a testate estate entitled to share in the residue,
(b) heirs of an intestate estate,
(c) claimants, and
(d) any other person whose unsatisfied interests in the estate may be affected by such assignment.

(8) The persons interested in a petition for an order of complete estate settlement under MCL 700.3952 or a petition for discharge under MCR 5.311(B)(3) are the
(a) devisees of a testate estate,
(b) heirs unless there has been an adjudication that decedent died testate,
(c) claimants, and
(d) such other persons whose interests are affected by the relief requested.

(9) The persons interested in a proceeding for an estate settlement order pursuant to MCL 700.3953 are the

(a) personal representative,

(b) devisees,

(c) claimants, and

(d) such other persons whose interests are affected by the relief requested.

(10) The persons interested in a proceeding for assignment and distribution of the share of an absent apparent heir or devisee in the estate of a decedent are the

(a) devisees of the will of the decedent,

(b) heirs of the decedent if the decedent did not leave a will,

(c) devisees of the will of the absent person, and

(d) presumptive heirs of the absent person.

(11) The persons interested in a petition for supervised administration after an estate has been commenced are the

(a) devisees, unless the court has previously found decedent died intestate,

(b) heirs, unless the court has previously found decedent died testate,

(c) personal representative, and

(d) claimants.

(12) The persons interested in an independent request for adjudication under MCL 700.3415 and a petition for an interim order under MCL 700.3505 are the

(a) personal representative, and

(b) other persons who will be affected by the adjudication.

(13) The persons interested in a petition for settlement of a wrongful-death action or distribution of wrongful-death proceeds are the

(a) heirs of the decedent,

(b) other persons who may be entitled to distribution of wrongful-death proceeds, and

(c) claimants whose interests are affected.

(14) The persons interested in a will contest settlement proceeding are the
(a) heirs of the decedent and
(b) devisees affected by settlement.

(15) The persons interested in a partition proceeding where the property has not been assigned to a trust under the will are the
(a) heirs in an intestate estate or
(b) devisees affected by partition.

(16) The persons interested in a partition proceeding where the property has been assigned to a trust under the will are the
(a) trustee and
(b) beneficiaries affected by the partition.

(17) The persons interested in a petition to establish the cause and date of death in an accident or disaster case under MCL 700.1208 are the heirs of the presumed decedent.

(18) The persons interested in a proceeding under the Mental Health Code that may result in an individual receiving involuntary mental health treatment or judicial admission of an individual with a developmental disability to a center are the
(a) individual,
(b) individual's attorney,
(c) petitioner,
(d) prosecuting attorney or petitioner's attorney,
(e) director of any hospital or center to which the individual has been admitted,
(f) the individual's spouse, if the spouse's whereabouts are known,
(g) the individual's guardian, if any,
(h) in a proceeding for judicial admission to a center, the community mental health program, and
(i) such other relatives or persons as the court may determine.

(19) The persons interested in a petition for appointment of a guardian for a minor are
(a) the minor, if 14 years of age or older;
(b) if known by the petitioner, each person who had the principal care and custody of the minor during the 63 days preceding the filing of the petition;
(c) the parents of the minor or, if neither of them is living, any grandparents and the adult presumptive heirs of the minor, and
(d) the nominated guardian.
(20) The persons interested in the acceptance of parental appointment of the guardian of a minor under MCL 700.5202 are

(a) the minor, if 14 years of age or older,
(b) the person having the minor’s care, and
(c) each grandparent and the adult presumptive heirs of the minor.

(21) The persons interested in a 7-day notice of acceptance of appointment as guardian of an incapacitated individual under MCL 700.5301 are the

(a) incapacitated individual,
(b) person having the care of the incapacitated individual, and
(c) presumptive heirs of the incapacitated individual.

(22) The persons interested in a petition for appointment of a guardian of an alleged incapacitated individual are

(a) the alleged incapacitated individual,
(b) if known, a person named as attorney in fact under a durable power of attorney,
(c) the alleged incapacitated individual’s spouse,
(d) the alleged incapacitated individual’s adult children and the individual’s parents,
(e) if no spouse, child, or parent is living, the presumptive heirs of the individual,
(f) the person who has the care and custody of the alleged incapacitated individual, and
(g) the nominated guardian.

(23) The persons interested in receiving a copy of the report of a guardian of a legally incapacitated individual on the condition of a ward are:

(a) the ward
(b) the person who has principal care and custody of the ward, and
(c) the spouse and adult children or, if no adult children are living, the presumptive heirs of the individual.

(24) The persons interested in a petition for the appointment of a conservator or for a protective order are

(a) the individual to be protected if 14 years of age or older,
(b) the presumptive heirs of the individual to be protected,
(c) if known, a person named as attorney in fact under a durable power of attorney,
(d) the nominated conservator, and
(e) a governmental agency paying benefits to the individual to be protected or before which an application for benefits is pending.

(25) The persons interested in a petition for the modification or termination of a guardianship or conservatorship or for the removal of a guardian or a conservator are

(a) those interested in a petition for appointment under subrule (C)(19), (21), (22), or (23) as the case may be, and

(b) the guardian or conservator.

(26) The persons interested in a petition by a conservator for instructions or approval of sale of real estate or other assets are

(a) the protected individual and

(b) those persons listed in subrule (C)(24) who will be affected by the instructions or order.

(27) The persons interested in receiving a copy of an inventory or account of a conservator or of a guardian are:

(a) the protected individual or ward, if he or she is 14 years of age or older and can be located,

(b) the presumptive heirs of the protected individual or ward,

(c) the claimants, and

(d) the guardian ad litem.

(28) The persons interested in a petition for approval of a trust under MCR 2.420 are

(a) the protected individual if 14 years of age or older,

(b) the presumptive heirs of the protected individual,

(c) if there is no conservator, a person named as attorney in fact under a durable power of attorney,

(d) the nominated trustee, and

(e) a governmental agency paying benefits to the individual to be protected or before which an application for benefits is pending.

(29) The persons interested in a petition for emancipation of a minor are

(a) the minor,

(b) parents of the minor,

(c) the affiant on an affidavit supporting emancipation, and

(d) any guardian or conservator.

(30) Interested persons for any proceeding concerning a durable power of attorney for health care are
(a) the patient,
(b) the patient's advocate,
(c) the patient's spouse,
(d) the patient's adult children,
(e) the patient's parents if the patient has no adult children,
(f) if the patient has no spouse, adult children or parents, the patient's minor children, or, if there are none, the presumptive heirs whose addresses are known,
(g) the patient's guardian and conservator, if any, and
(h) the patient's guardian ad litem.

(31) Persons interested in a proceeding to require, hear, or settle an accounting of an agent under a power of attorney are

(a) the principal,
(b) the attorney in fact or agent,
(c) any fiduciary of the principal,
(d) the principal's guardian ad litem or attorney, if any, and
(e) the principal's presumptive heirs.

(32) Subject to the provisions of Part 3 of Article VII of the Estates and Protected Individuals Code, the persons interested in the modification or termination of a noncharitable irrevocable trust are,

(a) the qualified trust beneficiaries affected by the relief requested,
(b) the settlor, or the settlor's representative, as referred to in MCL 700.7411(6), if the petitioner has a reasonable basis to believe the settlor is an incapacitated individual,
(c) the trust protector, if any, as referred to in MCL 700.7103(n),
(d) the current trustee, and
(e) any other person named in the terms of the trust to receive notice of such a proceeding.

(323) Subject to the provisions of Part 3 of Article VII of the Estates and Protected Individuals Code, the persons interested in a proceeding affecting a trust other than those already covered by subrules (C)(6), and (C)(28), and (C)(32) are:

(a) the qualified trust beneficiaries affected by the relief requested,
(b) the holder of a power of appointment affected by the relief requested,
(c) the current trustee,
(d) in a proceeding to appoint a trustee, the proposed successor trustee, if any, and
(e) the trust protector, if any, as referred to in MCL 700.7103(n), and

(f) the settlor of a revocable trust, or those persons who are entitled to be reasonably informed, as referred to in MCL 700.7603(2), if the petitioner has a reasonable basis to believe the settlor is an incapacitated individual.

(d) other persons whose interests are affected by the relief requested.

(D) The court shall make a specific determination of the interested persons if they are not defined by statute or court rule.

(E) In the interest of justice, the court may require additional persons be served.

History
Former MCR 5.205 Am. eff. Sept 1, 1990; Apr 1, 1991; Apr 1, 1992; renumbered as MCR 5.125 and am. eff. Apr 1, 2000, on interim basis and adopted eff. Jan 1, 2002; am. eff. May 1, 2009
5.125(C) Am. eff. May 1, 2002; May 1, 2003; Sept 1, 2004; Jan 8, 2008; May 28, 2008

MCR 5.201 Applicability

Except for MCR 5.204 and MCR 5.208, which apply in part to trustees and trusts, rules in this subchapter contain requirements applicable to all fiduciaries except trustees and apply to all estates except trusts.

History
5.201 New eff. Apr 1, 2000, on interim basis and adopted eff. Jan 1, 2002

Note: MCR 5.208 is new and replaces MCR 5.306 and MCR 5.503. Both MCR 5.306 and 5.503 will be deleted.

MCR 5.208 Notice to Creditors, Presentment of Claims
(A) Publication of Notice to Creditors; Contents. Unless the notice has already been given, the personal representative must publish, and a special personal representative may publish, in a newspaper, as defined by MCR 2.106(F), in a county in which a resident decedent was domiciled or in which the proceeding as to a nonresident was initiated, a notice to creditors as provided in MCL 700.3801. The notice must include:

(1) The name, and, if known, last known address, date of death, and date of birth of the decedent;

(2) The name and address of the personal representative;

(3) The name and address of the court where proceedings are filed; and

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(4) A statement that claims will be forever barred unless presented to the personal representative, or to both the court and the personal representative within 4 months after the publication of the notice.

(B) Notice to Known Creditors and Trustee. A personal representative who has published notice must cause a copy of the published notice or a similar notice to be served personally or by mail on each known creditor of the estate and to the trustee of a trust of which the decedent is settlor, as defined in MCL 700.7605(1). Notice need not be served on the trustee if the personal representative is the trustee.

(1) Within the time limits prescribed by law, the personal representative must cause a copy of the published notice or a similar notice to be served personally or by mail on each creditor of the estate whose identity at the time of publication or during the 4 months following publication is known to, or can be reasonably ascertained by, the personal representative.

(2) If, at the time of the publication, the address of a creditor is unknown and cannot be ascertained after diligent inquiry, the name of the creditor must be included in the published notice.

(C) Publication of Notice to Creditors and Known Creditors by Trustee. A notice that must be published under MCL 700.7608 must include:

(1) The name, and, if known, last known address, date of death, and date of birth of the trust’s deceased settlor;

(2) The trust’s name or other designation;

(3) The date the trust was established;

(4) The name and address of each trustee serving at the time of or as a result of the settlor’s death;

(5) The name and address of the trustee’s attorney, if any

and must be served on known creditors as provided in subrule (B) above.

(D) No Notice to Creditors. No notice need be given to creditors in the following situations:

(1) The decedent or settlor has been dead for more than 3 years;

(2) Notice need not be given to a creditor whose claim has been presented or paid;

(3) For a personal representative:

(a) The estate has no assets;

(b) The estate qualifies and is administered under MCL 700.3982; MCL 700.3983 or MCL 700.3987;

(c) Notice has previously been given under MCL 700.7608 in the county where the decedent was domiciled in Michigan.

(4) For a trustee, the costs of administration equal or exceed the value of the trust estate.
(E) Presentment of Claims. A claim shall be presented to the personal representative or trustee by mailing or delivering the claim to the personal representative or trustee, or the attorney for the personal representative or trustee, or, in the case of an estate, by filing the claim with the court and mailing or delivering a copy of the claim to the personal representative.

(F) A claim is considered presented

(1) on mailing, if addressed to the personal representative or trustee, or the attorney for the personal representative or trustee, or

(2) in all other cases, when received by the personal representative, or trustee or the attorney for the personal representative or trustee or in the case of an estate when filed with the court.

For purposes of this subrule (F), personal representative includes a proposed personal representative.
MCR 5.501 Trust Proceedings in General

(A) Applicability. This subchapter applies to all trusts as defined in MCL 700.1107(2)(m), including a trust established under a will and a trust created by court order or a separate document.

(B) Unsupervised Administration of Trusts. Unless an interested person invokes court jurisdiction, the administration of a trust shall proceed expeditiously, consistent with the terms of the trust, free of judicial intervention and without court order, approval, or other court action. Neither registration nor a proceeding concerning a trust results in continued supervisory proceedings.

(C) Commencement of Trust Proceedings. A proceeding concerning a trust is commenced by filing a petition in the court where the trust is or could be properly registered. Registration of the trust is not required for filing a petition.

(D) Appointment of Trustee Not Named in Creating Document. An interested person may petition the court for appointment of a trustee when there is a vacancy in a trusteeship, the order, will, or other document creating a trust does not name a trustee or when the person named in the creating document is either not available or cannot be qualified as trustee. The petitioner must give notice of hearing on the petition to the interested person. The court may issue an order appointing as trustee the person nominated in the petition or another person. The order must state whether the trustee must file a bond or execute an acceptance.

(E) Qualification of Trustee. A trustee appointed by an order of the court or nominating as a trustee in a will that has been admitted to probate is a successor to a document other than a will that created a trust shall qualify by executing an acceptance indicating the nominee’s willingness to serve. The trustee must serve the acceptance and order, if any, on the then known qualified current trust beneficiaries described in MCL 700.7103(8)(i) and, in the case of a testamentary trustee, on the personal representative of the decedent estate, if one has been appointed. No letters of trusteeship shall be issued by the court. The trustee or the attorney for the trustee may establish the trustee’s incumbency by executing an affidavit to that effect, identifying the trustee and the trust document and indicating that any required bond has been filed with the court and is in force.

(F) Transitional Rule. A trustee of a trust under the jurisdiction of the court before April 1, 2000, may request an order of the court closing court supervision and the file. On request by the trustee or on its own initiative, the court may order the closing of supervision of the trust and close the file. The trustee must give notice of the order to all current trust beneficiaries. Closing supervision does not preclude any interested trust beneficiary from later petitioning the court for supervision. Without regard to whether the court file is closed, all letters of authority for existing trusts are canceled as of April 1, 2000, and the trustee’s incumbency may be established in the manner provided in subrule (E).

History

5.501 New eff. Apr 1, 2000, on interim basis and adopted eff. Jan 1, 2002; am. eff. May 1, 2002
Rule 5.801 Appeals to Other Courts

(A) Right to Appeal. An interested person aggrieved by an order of the probate court may appeal as provided by this rule.

(B) Orders Appealable to Court of Appeals. Orders appealable of right to the Court of Appeals are as defined and limited to the following:

1. a final order affecting the rights or interests of a party to a civil action commenced in the probate court under MCR 5.101(C);

2. a final order affecting the rights or interests of an interested person in a proceeding involving a decedent estate, the estate of a person who has disappeared or is missing, a conservatorship or other protective proceeding, the estate of an individual with developmental disabilities, or an inter vivos trust or testamentary-a trust created under a will. These are defined as and limited to orders resolving the following matters:

   a. appointing or removing a personal representative, conservator, or trustee, or trust protector as referred to in MCL 700.7103(n), or denying such an appointment or removal;

   b. admitting or denying to probate of a will, codicil, or other testamentary instrument;

   c. determining the validity of a governing instrument;

   d. interpreting or construing a testamentary or inter vivos trust;

   e. approving or denying a settlement of a contest relating to an inter vivos trust or a testamentary-governing instrument;

   f. reforming, terminating, or modifying or denying the reformation, termination, or modification of a trust;

   g. granting or denying a petition to combine or divide trusts;

   h. discharging or denying the discharge of a surety on a bond from further liability;

   i. allowing, disallowing, or rejecting claims;

   j. assigning, selling, leasing, or encumbering any of the assets of an estate or trust;

   k. authorizing or denying the continuation of a business;

   l. determining special allowances in a decedent's estate such as a homestead allowance, an exempt property allowance, or a family allowance or right to remain in a dwelling;

   m. authorizing or denying rights of election;

   n. determining heirs, devisees, or beneficiaries;

   o. determining title to or claims to rights or interests in property;

   p. authorizing or denying partition of property;
(q) authorizing or denying specific performance;
(p) ascertaining survivorship of parties;
(q) granting or denying a petition to bar a mentally incompetent or minor wife from dower in the property of her living husband;
(r) granting or denying a petition to determine cy pres;
(s) directing or denying the making or repayment of distributions;
(t) determining or denying a constructive trust;
(u) determining or denying an oral contract relating to a will;
(v) allowing or disallowing an account, fees, or administration expenses;
(w) surcharging or refusing to surcharge a fiduciary or trust protector as referred to in MCL 700.7103(n);
(x) determining or directing payment or authorizing federal estate tax apportionment of taxes;
(y) distributing proceeds recovered for wrongful death under MCL 600.2922;
(z) determining or directing payment of inheritance taxes;
(aa) assigning residue;
(bb) granting or denying a petition for instructions;
(cc) authorizing disclaimers;
(dd) allowing or disallowing a trustee to change the principal place of a trust's administration;
(ee) other appeals as may be hereafter provided by statute.

(C) Final Orders Appealable to Circuit Court. All final orders not enumerated in subrule (B) are appealable of right to the circuit court. These include, but are not limited to:

(1) a final order affecting the rights and interests of an adult or a minor in a guardianship proceeding;

(2) a final order affecting the rights or interests of a person under the Mental Health Code, except for a final order affecting the rights or interests of a person in the estate of an individual with developmental disabilities.

(D) Interlocutory Orders. An interlocutory order, such as an order regarding discovery; ruling on evidence; appointing a guardian ad litem; or suspending a fiduciary for failure to give a new bond, to file an inventory, or to render an account, may be appealed only to the circuit court and only by leave of that court. The circuit court shall pay particular attention to an application for leave to appeal an interlocutory order if the probate court has certified that the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal may materially advance the termination of the litigation.
(E) Transfer of Appeals From Court of Appeals to Circuit Court. If an appeal of right within the jurisdiction of the circuit court is filed in the Court of Appeals, the Court of Appeals may transfer the appeal to the circuit court, which shall hear the appeal as if it had been filed in the circuit court.

(F) Appeals to Court of Appeals on Certification by Probate Court. Instead of appealing to the circuit court, a party may appeal directly to the Court of Appeals if the probate court certifies that the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an appeal directly to the Court of Appeals may materially advance the ultimate termination of the litigation. An appeal to the Court of Appeals under this subrule is by leave only under the provisions of MCR 7.205. In lieu of granting leave to appeal, the Court of Appeals may remand the appeal to the circuit court for consideration as on leave granted.
MCR 5.802 Appellate Procedure; Stays Pending Appeal

(A) Procedure. Except as modified by this subchapter, chapter 7 of these rules governs appeals from the probate court.

(B) Record.

(1) An appeal from the probate court is on the papers filed and a written transcript of the proceedings in the probate court or on a record settled and agreed to by the parties and approved by the court. The appeal is not de novo.

(2) The probate register may transmit certified copies of the necessary documents and papers in the file if the original papers are needed for further proceedings in the probate court. The parties shall not be required to pay for the copies as costs or otherwise.

(C) Stays Pending Appeals. An order removing a fiduciary; appointing a special personal representative or a special fiduciary; granting a new trial or rehearing; granting an allowance to the spouse or children of a decedent; granting permission to sue on a fiduciary’s bond; or suspending a fiduciary and appointing a special fiduciary, is not stayed pending appeal unless ordered by the court on motion for good cause.

History

5.802 Am. eff. Apr 1, 2000, on interim basis and adopted eff. Jan 1, 2002
Attachment 3 – Amicus Curiae Policy
Probate and Estate Planning Section of the State Bar of Michigan
Policy Regarding Consideration of Amicus Curiae Matters

The Amicus Curiae Committee (“Amicus Committee”) of the Probate and Estate Planning Section of the State Bar of Michigan (the “Section”) reviews and considers requests to the Section to file an amicus curiae brief, makes recommendations to the Section’s Council whether to file an amicus curiae brief, identifies legal counsel to prepare an amicus curiae brief, and oversees the work of legal counsel doing so.

It is the policy of the Section that amicus curiae briefs shall only be filed by the Section in cases pending in the Michigan Court of Appeals or the Michigan Supreme Court and which involve issues of significance in the areas of estate planning, trusts, probate, nonprobate estate settlement, guardianships, and conservatorships, or which involve Cases related to the practice of law in these areas. The Section does not file amicus curiae briefs in cases pending in a probate or circuit court and ordinarily does not file amicus curiae briefs in cases pending in federal court unless dealing directly with issues of Michigan law in the above mentioned areas.

The Amicus Committee reviews and considers requests for an amicus curiae brief (1) upon receipt of an Application for Consideration from a party to the litigation, (2) in response to an invitation to file an amicus curiae brief that is received by the Section from the court before which a case involving an issue of significance to the Section is pending, (3) upon the request of a Council member at the discretion of the Chair of the Committee or (4) by the Committee at its own discretion.

In determining whether to file an amicus curiae brief the Amicus Committee and the Section’s Council will consider all factors they consider relevant, including the anticipated impact of the lower court and appellate court(s) opinions on the Section’s attorneys and their clients, whether the lower court erred, the perceived likelihood a court to which leave to appeal has been sought will accept the case, whether the lower court’s opinion is a published opinion, whether the case involves facts that are likely to recur, whether a higher court is likely to grant leave to appeal in a particular case, and the financial resources of the Section. Examples of cases in which the Section favors filing an amicus curiae brief are (a) cases involving facts or principles with widespread applicability, (b) cases that affect the practice of law by members of the Section, and (c) cases in which the Michigan court of appeals has erred in a published opinion.

In determining whether to file an amicus curiae brief, the Amicus Committee will contact the legal counsel for the parties in the particular case to determine the facts and legal principles involved, obtain and review all relevant pleadings, independently review the applicable law, and evaluate possible positions the Section might wish to take in the matter. After completing its review, the Amicus Committee will submit a written report and recommendation to the Section’s Council regarding whether an amicus curiae brief should be filed by the Section and what position(s) the Section should take on the issues presented. In general, the Section will take positions and advocate for what the Section believes the law is or should be and will not advocate or favor a result for any particular party to the litigation.
When time permits, the Amicus Committee will submit its written report and recommendations before the Council’s next regularly scheduled meeting following receipt of the request by the Amicus Committee. When time permits, a decision regarding whether to file an amicus curiae brief will be made by the Council at the meeting at which the Amicus Committee’s recommendation is presented.

At meetings of the Section’s Council, or at meetings of the Section’s Committee on Special Projects (“CSP”) when a request for an amicus curiae brief has been referred by the Council to the CSP, the Amicus Committee will present the facts of the case, discuss the legal principles and issues involved, and offer the Committee’s recommendation.

Attorneys for the parties in the case will be permitted to offer written submissions to the Council and CSP and to answer specific questions from members of the Council or CSP, but oral presentations by attorneys for the parties will not be permitted at CSP or Council meetings unless requested by a vote of the Council members. Attorneys representing parties in the proceeding (including attorneys affiliated with law firms representing the parties) shall identify themselves at the commencement of the Amicus Committee’s presentation of the matter and shall excuse themselves and shall not be present during the Council’s or CSP’s discussions nor during the CSP’s and/or Council’s vote whether to accept the Amicus Committee’s recommendation.

All votes by the Council to accept the Amicus Committee’s report and recommendation, to file an amicus curiae brief, and to determine the position(s) to be taken in the brief shall be by show of hands and the votes for, against, and in abstention shall be recorded in the minutes by the Secretary of the Section or the acting secretary of the meeting of the Council if the Secretary of the Section is not present.

Notwithstanding any discussion or vote by CSP or otherwise, the Section’s Council retains final authority to determine whether the Section will file an amicus curiae brief and the position(s) that the Section will take. Where possible the Section will seek opportunities to file joint amicus curiae briefs and share in the cost of their preparation with other sections of the State Bar of Michigan or other interested organizations. The Section will pay the costs of preparing and filing amicus curiae briefs from Section funds, and shall not accept contributions to defray the costs from any party to the proceeding.

In connection with any case in which the Section’s Council votes to file an amicus curiae brief, the Council ordinarily shall authorize the Amicus Committee to retain legal counsel, and shall authorize a sum, ordinarily not to exceed $5,000 per case, to be paid to legal counsel, to file a brief on behalf of the Section setting forth the Section’s position(s) in the case.

This policy is subject to change by vote of the Section’s Council.

Adopted 9/19/09
Application for Consideration

If you believe that you have a case that warrants involvement of the Probate and Estate Planning Section of the State Bar of Michigan (“Section”), based upon the Section’s Policy Regarding Consideration of Amicus Curiae Matters, please complete this form and submit it to the Chair of the Amicus Curiae Committee, along with all relevant pleadings of the parties involved in the case, and all court orders and opinions rendered.

Date________________

Name___________________________________________ P Number___________________

Firm Name___________________________________________________________________

Address______________________________________________________________________

City__________________________ State______ Zip Code____________

Phone Number__________________________ Fax Number__________________________

E-mail address________________________________________________________________

Attach Additional Sheets as Required

Name of Case_________________________________________________________________

Parties Involved_______________________________________________________________

____________________________________________________________________________

Current Status_________________________________________________________________

Deadlines_____________________________________________________________________

Issue(s) Presented________________________________________________________________

____________________________________________________________________________

____________________________________________________________________________

____________________________________________________________________________
Michigan Statute(s) or Court Rule(s) at Issue
______________________________________________________________________________
______________________________________________________________________________
Common Law Issues/Cases at Issue
______________________________________________________________________________
______________________________________________________________________________
Why do you believe that this case requires the involvement of the Probate and Estate Planning
Section?
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
Do you believe that a decision in this case will substantially impact this Section’s attorneys and
their clients? If so, how?
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
Attachment 4 – Power of Attorney Committee
REPORT

MICHIGAN UNIFORM POWER OF ATTORNEY ACT HB 5196
Submitted by Daniel P. Marsh in behalf of Power of Attorney subcommittee

The POA Committee has been reviewing the Michigan law concerning financial powers of attorney. Instead of a time consuming survey, the committee identified the following concerns to address initially;

i) Enforcement of Third Party Acceptance
ii) Developmental Disabilities/Capacity
iii) Acceptance By Agent
iv) Enumerate Powers of an Agent
v) Out of State Acceptance (Execution Issue)
vi) Accounting Presumptions
vii) Uniform Trust Code & Power of Attorney Crossovers

The committee offers the following report in light of recent legislation, HB 5196, introduced concerning POAs.

HB 5196 (sponsored by Rep. Switalski and 37 additional House Members) uses a derivation of a uniform act for powers of attorney as a model and is part of “The Elder Abuse Package.” HB 5196 has many substantive deviations from the act drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL), known as the Uniform Power of Attorney Act (UPOAA). So many, in fact, that it could not be supported as an adoption of the UPOAA. It appears to be based on a very early, preliminary draft of the Act. This was the same critique that HB 4180 (2007) that lead to the expectation there would be movement toward more conformity with the final Act. In comparison to the UPOAA, this bill is a real step backwards and has so many problems that it would not be worth the time to try to address them all. If the legislature introduces something that is truly based on the UPOAA, there may be support from NUCSSL and AARP. To clarify, this IS NOT the UPOAA and that it in fact contains provisions that are quite contrary to important UPOAA core provisions. Critiques were circulated last year that are relevant to this bill.

There are parts of the law seeking to codify some Michigan common law while other provisions would create new law in this area. Some of these new areas represent changes to Michigan legal tradition. Uniformity for uniformity’s sake is not a good basis for enacting legislation. Sound public policy must exist in order to justify adoption of a law.

A DPOA can provide tremendous power, responsibility and duty on an agent that provides opportunity for injury to the principal, either from malfeasance or criminal activity. As a result, Michigan law regarding powers of attorney should proceed cautiously.
Reasons for changing existing statute have not been provided. There has not been analysis concluding whether this legislation would correct any deficiencies in existing legislation.

Some Significant changes proposed to existing legislation in HB 5196:

1) A significant change in the bill changes the presumption of whether a POA is durable or not. Section 105 of the act provides, “A power of attorney created under this [act] is durable unless it expressly provides that it is terminated by the incapacity of the principal.”

2) The bill creates a whole list of newly-created "interested parties" who have standing to demand accountings and initiate court hearings. These interested parties include government agencies.

3) Penalty for unreasonable refusal of DPOA (enforcement). Both alternative penalty provisions found in the UPOAA at Section 120 for third parties failing to honor a power of attorney are excluded from HB 5196. However, the $1,000 minimum damages provision in the original HB 4180 (which is not part of the Uniform Act) has been included. Also, HB 5196 provides that generally, a third party must: a) Either accept an acknowledged power of attorney or not accept because the third party believes the power of attorney is not valid, b) has knowledge the authority is terminated or the power of attorney is terminated, or c) the agent does not have the authority asserted, and d) provides the agent a writing within 5 business days after refusal that describes the reason for the refusal. In the event of a refusal, a report must be made to the “local adult protective agency.”

If the refusing third party fails to follow the prescribed procedures and otherwise fails to honor the power of attorney, “The amount recoverable for refusal to accept an agent's authority is the total of the damages from the refusal or $1,000.00, whichever is greater, plus costs and reasonable attorney fees.”

4) Judge Mack shared his thoughts on Sections with Significant Potential Problems

A) Huge Potential Provision for Abuse\Key Change from EPIC: Conservator does not have ability to terminate power of attorney; agent’s authority continues unless limited, suspended, or terminated by the court. Sec. 109(2).

This language is part of the Uniform Act, and runs directly counter to EPIC Sec. 5503(1), Which states in pertinent part: “The fiduciary has the same power to revoke or amend the Power of attorney that the principal would have had if he or she were not disabled or incapacitated.”

Important Note: This language would open the door to classic power of attorney abuse and is illustrative of the disconnect between the drafters of the Uniform Act and the vast Majority of probate practitioners, who frequently deal with abuses of powers of attorneys. The official comment to Sec. 108 (corresponding Section from Uniform Act) concedes That the Original Uniform Act empowered a conservator or other later-appointed Fiduciary with the same ability the principal had prior to incapacity to revoke or amend their power of attorney. However, they state that by now requiring a specific court order
to terminate the power of attorney "This approach reflects greater deference for the
previously expressed preference of the principal and is consistent with the state
legislative trend that has departed from the Original Act."

The forgoing comment demonstrates a fundamental lack of understanding by the drafters
of the Uniform Act of the potential for abuse of powers of attorneys. A conservator
would be subsequently appointed if a Judge believed that a problem existed regarding a
previously executed power of attorney. Giving greater deference to the principal’s
previously expressed preferences presupposes that such a preference was valid and free
from undue influence, fraud, or lack of capacity. The attorney-in-fact can raise these
issues at the initial conservatorship hearing; if the Judge is convinced that no problem
exists with the document, the petition can be dismissed and the power of attorney
continue to operate; if not, empowering the conservator to terminate the power of
attorney is a highly effective tool to stop and/or prevent abuse by an unscrupulous
attorney in fact.

B) Statutory Power of Attorney Form – Similar to EPIC’s Statutory Will. Significant
concerns with Statutory Power of Attorney:

i) Potential for Abuse. Statutory Wills have a failure rate of approximately 50%,
but this is a "no harm, no foul" situation, since the testator is dead and the worst
outcome would be distribution of their assets via the intestacy laws. A Statutory
Power of Attorney is a document providing for the management (or
mismangement) of a living individual’s assets. By the time any inappropriate
activity is detected and stopped, the individual may have lost all or a significant
portion of their assets which were necessary to sustain their standard of living.

ii) Facilitating Misappropriation of Assets. A Statutory Power of Attorney would
encourage misuse of assets by making a “safe harbor” form readily available. An
unscrupulous individual could quickly and easily obtain a form instead of having
to attempt to draft their own or contact an attorney, who may become aware of the
suspicious circumstances and be able to prevent wrongdoing.

iii) Encouraging Use When not Necessary\Appropriate. In Wisconsin, which has
adopted the Uniform Act, Statutory Power of Attorney forms are passed out by
social workers “like candy”. While undoubtedly well-intentioned, this wholesale,
gratuitous distribution could actually have the opposite effect of having
individuals execute these documents when they are not necessary or appropriate,
without understanding the impact of their actions. Also, attorneys would be
consulted less often if these documents were indiscriminately disbursed, which
further increases the potential for abuse.

Statutory Form
Last year, I believe the Council voted against the Statutory Form in HB 4180 (2007). It appears the same form is proposed in the current bill HB 5196.

The Michigan Bankers Association is working on a stand alone form for use with financial institutions. The form is intended to be used as a safe harbor for banks. When presented with a statutory form, the institution is protected from a subsequent lawsuit charging responsibility for loss because the authority should not have been relied upon.

Attached is spreadsheet circulated last year concerning HB 4180 by Doug Chalgian that is relevant to HB 5196.