

**MEETING OF THE COUNCIL OF THE  
PROBATE AND ESTATE PLANNING SECTION  
OF  
THE STATE BAR OF MICHIGAN  
September 6, 2014  
Lansing, Michigan**

**Minutes**

**I. Call to Order**

The Chair of the Section, Amy N. Morrissey, called the meeting to order at approximately 10:10 a.m.

**II. Attendance**

A total of 4 officers and 18 members of the Council were present, representing a quorum.

**A. The following four officers of the Council were in attendance:**

Shaheen I. Imami, Chair Elect  
Amy N. Morrissey, Chair  
Marlaine C. Teahan, Secretary  
Marguerite Munson Lentz, Treasurer

**B. The following 18 members of the Council were in attendance:**

Susan M. Allan	Michele C. Marquardt
W. Josh Ard	Richard C. Mills
Christopher A. Ballard	Lorraine F. New
George F. Bearup	Patricia M. Ouellette
Rhonda M. Clark-Kreuer	David L.J.M. Skidmore
Hon. Michael L. Jaconette	James P. Spica
Mark E. Kellogg	Geoffrey R. Vernon
David P. Lucas	
Raj A. Malviya	

**C. The following officers and members were absent with excuse:**

James B. Steward, Vice-Chair  
Constance L. Brigman  
Nancy H. Welber

**D. The following officers and members were absent without excuse: None**

**E. The following ex-officio members of the Council were in attendance:**

George W. Gregory	Nancy L. Little
Phillip E. Harter	Thomas F. Sweeney

**F. Others in attendance:**

Buzz Leach	Kathleen M. Goetsch
Robert M. O'Reilly	Paul Vaidya
Dan Kosmowski	Stephen Elkins
Sueann T. Mitchell	Michael Lichterman
Neal Nusholtz	Katie Lynwood
Tim White	Rebecca Schnelz, Probate Registers Liaison
Nick Reister	Jeanne Murphy, ICLE Liaison
J.V. Anderton	Hon. David M. Murkowski, MPJA Liaison
Justine M. Sylvester	John Lindley, Public Affairs Associates

**III. Minutes of June 7, 2014, Meeting of the Council**

There being no corrections to the June 7, 2014 Minutes of the Council, they were approved as submitted by a motion made by Michele C. Marquardt and seconded by David L.J.M. Skidmore. The Minutes were approved unanimously.

**IV. Treasurer Report -- Marlaine C. Teahan**

The Treasurer's report was given in full during the Annual Meeting of the Section and is incorporated here by reference. **See Attachment A.**

**V. Chairperson's Report -- Amy N. Morrissey**

The Chair thanked Judge Murkowski for his many contributions to the Council and invited him to continue attending as much as possible. The Chair thanked Thomas F. Sweeney for a fine job as the Probate Section's Chair for the past year. Mr. Sweeney shared remarks and reflections on the past year. Ms. Morrissey gave Mr. Sweeney a plaque and gift to expression the entire Section's appreciation for a job well done.

Ms. Morrissey welcomed the new council members: Hon. Michael L. Jaconette, Mark E. Kellogg, David P. Lucas, Raj A. Malviya, and Richard C. Mills.

In the absence of Douglas A. Mielock, the Awards Committee Chair, Ms. Morrissey reported that this year, the Michael Irish award will be given to Sebastian V. Grassi, Jr. George Gregory and Nancy Little will present the award to Mr. Grassi at his home; other Council members are welcome to attend.

So far, there is no response from Supreme Court on the Task Force on the Role of the State Bar of Michigan. While Ms. Morrissey is monitoring developments, there is no present indication of where that is going or how it will impact our Section. There is a State Bar Leadership meeting this month. Council members are encouraged to look online at the comments of members of the State Bar regarding the Task Force issues.

The biennial chart of the Section's priorities was discussed. Ms. Morrissey asked for input. It was noted that the annual institute was missing; it will be added to the far right column and submitted with next month's Chairperson's report exhibits. **See Attachment B.**

New committee chair assignments were discussed. Committee chairs were encouraged to poll current committee members to be sure of continued interest and participation. A new committee was formed called the Membership Committee. The basic mission will be to reach out to our Section's members. Raj A. Malviya has been appointed as committee chair and will assemble his committee by next month's meeting. Mr. Malviya is a member of an ABA committee with a similar mission. An updated version of the committee assignments will be included in next month's materials.

To encourage Section Members to join committees, Ms. Morrissey has asked the State Bar to add a link to our Section's webpages that allow State Bar members to easily express interest on serving on a committee. Ms. Morrissey invited those in attendance to join a committee.

## **VI. Report of the Committee on Special Projects (CSP) Marguerite C. Lentz**

**A.** CSP reviewed changes made to fiduciary access of digital asset legislation that were made to conform our draft to final changes done by the Uniform Law Commission (ULC). These changes were discussed with input from the Committee on Special Projects. Updates will be made by next month's meeting and a report will be made to Council.

**B.** The divided trustee legislation was also reviewed by CSP. This project has been put on hold for now since the ULC has created a drafting committee. Mr. Spica was named to the ULC drafting committee.

## **VII. Standing Committee Reports**

### **A. Internal Governance**

- 1. Budget James B. Steward - No report.**
- 2. Bylaws Nancy H. Welber**

At the Annual Meeting of the Section, the Bylaws were amended by a majority vote of those Section members present. The amended Bylaws will be submitted by the Secretary to the Board of Commissioners for approval. **See Attachment C.**

- 3. Awards Douglas A. Mielock – No report other than the Chairperson's report.**
- 4. Planning Amy N. Morrissey - No report.**
- 5. Nominating Douglas G. Chalgian**

Report submitted at the June 2014 meeting. Nominations were closed at the June meeting. At the Annual Meeting of the Section held today before the Council meeting, the nominated slate of officers and council members was approved as follows:

Officers:

Amy N. Morrissey, Chair  
Shaheen I. Imami, Chair Elect  
James B. Steward, Vice-Chair  
Marlaine C. Teahan, Secretary  
Marguerite Munson Lentz, Treasurer

Council Member for a 3-year term:

Hon. Michael L. Jaconette  
Mark E. Kellogg  
Raj A. Malviya

Council Member for a partial 1-year term:

Richard C. Mills

**6. Annual Meeting Amy N. Morrissey - No report.**

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

Error! Bookmark not defined.**1. Amicus Curiae David L. Skidmore - No report.**

**2. Probate Institute James B. Steward** – Mr. Steward and Jeff Kirkey of ICLE have discussed content for the next annual institute. A draft schedule has been prepared. More information to come.

**3. State Bar and Section Journals Amy N. Morrissey**

Ms. Little reports that the Section Journal is on schedule and all is going smoothly. At the Annual Meeting of the Section today, it was voted that the Section Journal will no longer offer a print version and will only be distributed electronically. Ms. Little noted her appreciation of the editors and authors.

**4. Citizens Outreach Constance L. Brigman - No report.**

**5. Electronic Communications William J. Ard**

The committee is working on a policy regarding emails and the listserv. The current key question is how to solve issues of people offering to sell products and the forwarding of emails.

**C. Legislation and Lobbying**

**1. Legislation Christopher A. Ballard**

Mr. Ballard discussed the following bills:

- HB 5665 - relating to the confidentiality of a property transfer affidavit. If passed, only taxing authorities would receive that affidavit.
- HB 5552. This month, this bill is expected to move out of the Senate Finance Committee and by end of month be on the way to the Governor's desk. While the Committee is not entirely satisfied with this bill, all agree that it is better than what we have. While the

Committee does not agree with it entirely, Mr. Bearup's Committee recommends that our Section not take a formal policy position on this bill as we want to take a position later. It was generally agreed to not take a position at this time.

- SB 465 and 466. These bills relate to the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA). Sen. Schuitmaker is working on this and a new draft is expected early next week. It is expected that the new draft will provide language acceptable to most stakeholders. If so, this will then be pushed in the lame duck session and it is likely to pass. Our Guardianship, Conservatorship, and End of Life Committee looked at the uniform act (UAGPPJA) for a couple of years. This lengthy study resulted in the passage of new Michigan law which was passed in 2012. James B. Steward had concerns with the uniform act. Judge Murkowski said the Michigan Probate Judges Association ("MPJA") thought it was not necessary and believes that the MPJA will take a position on these new bills. All agree, however, that the new draft will need to be studied before any conclusions can be drawn. John Lindley of Public Affairs Associates ("PAA") will get committee members the new draft as soon as it is available.

**2. Updating Michigan Law Marguerite Munson Lentz - No report.**

**3. Insurance Committee Geoffrey R. Vernon**

Mr. Vernon added to the report given at CSP -- The committee will circulate a draft bill at their next committee meeting. It is hoped that the committee will have a draft ready for review at a CSP meeting in the near future.

**4. Artificial Reproductive Technology Nancy H. Welber**

In Ms. Welber's absence, it was reported that the committee is about two-thirds through the planned work. It is expected that the committee will have a draft ready for CSP review this Fall.

**D. Ethics and Professional Standards**

**1. Ethics J. David Kerr - No report.**

**2. Unauthorized Practice of Law & Multidisciplinary Practice Robert M. Taylor**  
No report.

**3. Specialization and Certification James B. Steward - No report.**

**E. Administration of Justice**

**1. Court Rules, Procedures and Forms Michele C. Marquardt**

The Estates and Trusts Workgroup of the Supreme Court Administrative Office is only reviewing a few probate forms this Fall. Changes were discussed to PC 553 and PC 565. The committee submitted comments on PC 558 – to make it conform with the statute. Ms. Marquardt will be going to testify at a hearing before the Supreme Court on various court rule changes, including MCR 5.125(C)(6). A report on these court rule changes will be included in the materials for next month.

**2. Fiduciary Exception to Attorney Client Privilege George F. Bearup**  
No report.

**F. Areas of Practice**

- 1. Real Estate George F. Bearup** - No report.
- 2. Transfer Tax Committee Lorraine F. New**

Ms. New discussed her written Tax Nugget. The IRS has a new interactive approach to IRS Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code. Ms. New advises use of the interactive form in order to obtain a quicker response from the IRS. This advice is given based upon the fact that more than a million of applications have been submitted for entities seeking exempt status under Section 501(c)(3). **See Attachment D**

Mr. Spica reminded members to update their emails and other print material relative to Revised Circular 230 (Rev. 6-2104), Rules Governing Practice Before the Internal Revenue Service. A summary of this information will be added as a Journal newsletter column.

It was also noted that the IRS Form 2848, Power of Attorney and Declaration of Representative, was changed in July 2014. It is wise to use the new form going forward.

**3. Charitable and Exempt Organization Christopher A. Ballard**

Mr. Ballard gave practical advice and tips for the online application process for the new Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code. He mentioned that with this process, exempt status is granted much more quickly -- sometimes even as quickly as less than 10 days. This is a great new procedure. The down side is that the new process contains some confusion as to who should sign the online form. Right now the client needs to do the online signature because there is no Power of Attorney on file. Another bit of confusion results from the fact that while an entity has responsibility for providing information to the public if they ask, this information is not online.

The new application process can be used for both private and public foundation with assets expected to be \$50,000 or less for next 3 years. For private foundations that are unfunded in an estate plan, this is a quick/easy way to get this set up; however, there is a limitation on assets of \$250,000.

**4. Guardianship, Conservatorship, and End of Life Committee Rhonda M. Clark-Kreuer**

Once PAA, our lobbyist, provides the committee with the new draft for the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA), Ms. Clark will review it with her committee closely in order to report to Council.

**G. Liaisons**

- 1. Alternative Dispute Resolution Section Liaison** - No report.

2. **Business Law Section Liaison John R. Dresser - No report**
3. **Elder Law and Disability Rights Section Liaison Amy R. Tripp**

In general terms, the Council discussed the current status of the SBO Trust issues that are currently being addressed by the Elder Law and Disability Rights Section.

4. **Family Law Section Liaison Patricia M. Ouellette - No report**
5. **ICLE Liaison Jeanne Murphy - No report**
6. **Law Schools Liaison William J. Ard - No report**
7. **Michigan Bankers Association Liaison Susan Allan- No report**
8. **Michigan Probate Judges Association Liaison Hon. Judge David M. Murkowski**  
No report.
9. **Probate Registers Liaison Rebecca A. Schnelz- No report.**
10. **SCAO Michele C. Marquardt, Constance L. Brigman, Rebecca A. Schnelz**  
No report.
11. **Solutions on Self-Help Task Force Liaison Rebecca A. Schnelz- No report**
12. **State Bar Liaison Richard Siriani- No report**
13. **Taxation Section Liaison George W. Gregory - No report**

**VIII. Other Business**

**IX. Hot Topics**

- X. Adjournment – The Chair adjourned the meeting at 11:22 a.m.**

Respectfully submitted,



Marlaine C. Teahan  
Acting Secretary for  
James A. Steward, Secretary

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

Report of e-mail Voting

taken

September, 2014

On Monday, September 8, 2014, the Council received revised drafts of the bill package which was previously introduced in the Michigan Senate to adopt a variation of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) in Michigan. Due to the legislature's tight schedule, the Council Chair, Amy N. Morrissey, asked the Council's Guardianship, Conservatorship, and End of Life Committee to review these proposals and report back to the Council by the following week. That Committee met on Saturday, September 13, 2014, and after discussion adopted, by unanimous vote, the following recommendation to Council:

The Guardianship, Conservatorship, and End of Life Committee recommends to the Probate & Estate Planning Section Council that it adopt a Public Policy Position Statement opposing SB 465 (S-1) Draft 2 and SB 466 (S-1) Draft 1, as well as the proposed companion amendment to the "Security Freeze Act," in part because the proposed legislation has not been sufficiently reviewed and analyzed to ensure that the core concepts expressed by these Bills will actually result without causing unintended and undesirable changes to current Michigan guardian and conservator laws. For example, one primary stated purpose of this proposed legislation is for the UAGPPJA to apply **only** in those cases in which there is an inter-jurisdictional conflict. This intent is stated in Section 503 of the current proposal. However, the jurisdictional scope of the proposed Act is not actually limited in that manner. For example, Section 203 reads as follows:

Sec. 203. This article provides the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult. [emphasis added]

This wording is identical to the corresponding provision (at Section 202) of the prior version. Therefore, this proposed legislation does not in fact provide that the jurisdictional hierarchy concepts of the Uniform Act will only apply if a jurisdictional issue is raised. If that intent is to be achieved, additional wording revisions are needed to provide exactly how that concept will be applied in

practice, including some sort of time limitations on when the jurisdictional conflict issue must be raised.

In addition, we oppose adoption of Articles III and IV of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) which are contained in these Bills. The provisions of those Articles were previously reviewed and debated extensively. Ultimately, that review and debate resulted in the provisions adopted as Act 545 of 2012 (that Act basically makes it easier for an out-of-state guardian or conservator to be appointed as such for the ward in Michigan; see MCL 700.5202a, 700.5301a, 700.5313 and 700.5433). Articles III and IV do not need to be part of the jurisdictional Act and present separate issues.

When reviewing these proposals, we must continually keep in mind that **the purpose of the Uniform Act is to change the jurisdictional basis for when Michigan courts are allowed to act regarding the appointment of guardian or conservator** – if Michigan does not have jurisdiction, as stated in our laws, then the Michigan courts cannot act.

On Monday, September 15, 2014, the Chair of that Committee submitted the report to the Council Chair and moved that Council adopt that recommendation. On September 16, 2014, the Chair submitted that motion and report, by e-mail delivery, to the Council members for review and vote. On September 17, 2014 the vote on that motion was completed, with all 23 Council members voting in favor, none opposed and no abstentions.

James B. Steward,  
Council Secretary

# Attachment A

**Probate and Estate Planning Council**  
**Treasurer's Report**  
**September 6, 2014**

**Income/Expense Reports**

An unaudited report through July 31, 2014 is attached. This month's spreadsheet covers from April, 2014 to July, 2014. The August data has not yet been received from the State Bar.

A few highlights regarding the attached spreadsheet:

- We have received more membership dues than expected and are at 100.50% of our expected revenue.
- We have spent less than expected and with two months of the fiscal year left to report, we are at 67% of our expected disbursements.
- With two months remaining in the fiscal year, it is estimated that we will be under budget in many categories and at or under budget in all categories.

**Reimbursements for Fiscal Year 2013-14 deadline**

To be counted for this Fiscal Year, the State Bar requires that all reimbursements for travel, invoices, and other expenses advanced on behalf of the Section be submitted by September 30, 2014. In order to allow time for processing these, submission of your reimbursement forms MUST be received by the Treasurer by Friday, September 26, 2014 at midnight.

**Mileage Reimbursement Rate**

The IRS business mileage reimbursement rate for 2014 is \$0.56 per mile. If you are eligible for reimbursement of your mileage for Probate Council business, please use this rate on your SBM expense reimbursement forms. The SBM forms have been updated. The form and instructions are attached.

**Expense Reimbursement Requests**

- Instructions: [http://www.michbar.org/generalinfo/pdfs/sectexp\\_instruction.pdf](http://www.michbar.org/generalinfo/pdfs/sectexp_instruction.pdf) .
- Form: <http://www.michbar.org/generalinfo/pdfs/sectexp.pdf>
- Email forms to [mteahan@fraserlawfirm.com](mailto:mteahan@fraserlawfirm.com) or provide paper copies in person or by mail.

Marlaine C. Teahan, Treasurer  
Probate and Estate Planning Section

Mailing Address: Marlaine C. Teahan  
Fraser Trebilcock  
124 West Allegan Street, Suite 1000  
Lansing MI 48933

**Probate and Estate Planning Section  
Treasurer's Report through July 31, 2014**

Beginning General Fund	\$ 245,615.63	\$ 235,426.93	\$ 228,696.91	\$ 219,133.65	\$ 180,511.60			
Beginning Amicus Fund	\$ 25,785.00	\$ 25,785.00	\$ 25,785.00	\$ 25,785.00	\$ 25,785.00			
Beginning Total Fund Balance	\$ 271,400.63	\$ 261,211.93	\$ 254,481.91	\$ 244,918.65	\$ 206,296.60			
Use of Amicus Fund overage	-	-	-		(361.50)			

	April	May	June	July	FY to Date Actual	Budget 2013-14	Variance	Year to Date Percentage
<b>Revenue</b>								
Membership Dues	70.00	140.00	105.00	175.00	115,570.00	115,000.00	570.00	100.50%
Publishing Agreements	-	-	-	-	650.00	650.00	-	100%
Other	-	-	-	-	35.00	350.00	(315.00)	10%
<b>Total Receipts</b>	<b>70.00</b>	<b>140.00</b>	<b>105.00</b>	<b>175.00</b>	<b>116,255.00</b>	<b>116,000.00</b>	<b>255.00</b>	<b>100%</b>
<b>Disbursements</b>								
Journal	3,750.00	75.00	6,990.54	-	15,898.82	25,000.00	(9,101.18)	64%
Chairperson's Dinner(1)	-	-	-	-	5,457.20	6,500.00	(1,042.80)	84%
Travel	2,286.79	564.34	686.00	179.20	14,306.13	18,500.00	(4,193.87)	77%
Lobbying	2,500.00	-	-	5,000.00	25,000.00	30,000.00	(5,000.00)	83%
Meetings(2)	926.88	-	1,916.72	1,620.82	10,662.28	14,000.00	(3,337.72)	76%
Long-range Planning	-	-	-	-	-	1,000.00	(1,000.00)	0%
Support for Annual Institute	636.00	6,230.68	-	45.00	11,911.68	14,000.00	(2,088.32)	85%
Amicus Briefs	-	-	-	-	-	10,000.00	(10,000.00)	0%
ListServ(3)	159.03	-	75.00	150.00	834.03	1,400.00	(565.97)	60%
Postage	-	-	-	-	-	100.00	(100.00)	0%
Telephone	-	-	-	-	-	250.00	(250.00)	0%
Seminars	-	-	-	-	-	4,000.00	(4,000.00)	0%
Other(4)	-	-	-	-	21.33	1,000.00	(978.67)	2%
<b>Total Disbursements</b>	<b>10,258.70</b>	<b>6,870.02</b>	<b>9,668.26</b>	<b>6,995.02</b>	<b>84,452.97</b>	<b>125,750.00</b>	<b>(41,658.53)</b>	<b>67%</b>
Net Increase (Decrease)	(10,188.70)	(6,730.02)	(9,563.26)	(6,820.02)	31,802.03	(9,750.00)	41,913.53	
Ending Fund Balance (5)	<b>261,211.93</b>	<b>254,481.91</b>	<b>244,918.65</b>	<b>238,098.63</b>	<b>238,098.63</b>			

**Footnotes**

(1)Includes plaques for outgoing Chair and Council Members

(2)includes SBM Leadership Conference expenses for incoming Chair and Chair Elect

(3)includes ListServ, telephone, e-blast & other electronic communications

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

(5)includes \$25,000 allocated to "Amicus Fund" for extra amicus brief expenses in excess of current budget amount



## Section Expense Reimbursement Policies and Procedures

### General Policies

1. Requests for reimbursement of individual expenses should be submitted as soon as possible following the event and no later than two weeks following the close of the fiscal year in which the expense is incurred so that the books for that year can be closed and audited.
2. All out of pocket expenses must be itemized.
3. Detailed receipts are recommended for all expenses but required for expenses over \$25.
4. Meal receipts for more than one person must indicate names of all those in attendance unless the function is a section council meeting where the minutes of that meeting indicate the names of those present. Seminar meal functions should indicate the number guaranteed and those in attendance, if different.
5. Spouse expenses are generally not reimbursable.
6. Mileage is reimbursed at the current IRS approved rate for business mileage. Reimbursement of mileage or travel expenses is limited to actual distance traveled; not distance from domicile to the meeting site.
7. Receipts for lodging expenses must be supported by a copy of the itemized bill showing the per night charge, meal expenses and all other charges, not simply a credit card receipt, for the total paid.
8. Airline tickets should be purchased as far in advance as possible to take advantage of any cost saving plans available.
  - A. Tickets should be at the best rate available for as direct a path as possible.

- B. First class tickets will not be reimbursed in full but will only be reimbursed up to the amount of the best or average coach class ticket available for that trip.
- C. Increased costs incurred due to side trips for the private benefit of the individual will be deducted.
- D. A copy of the ticket receipt showing the itinerary must be attached to the reimbursement request.

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

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

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

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

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

14. Refunds from professional organizations (Example: ABA/NABE) for registration fees and travel must be made payable to the State Bar of Michigan and sent to the attention of the Finance Department. If the State Bar of Michigan is

paying your expenses or reimbursing you for a conference and you are aware you will receive a refund, please notify the finance department staff at the time you submit your request for payment.

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

### Specific Policies

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

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

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

# Attachment B

**Probate & Estate Planning Section  
Biennial Plan of Work  
10/1/2014 - 9/30/2016**

	<b>Statutory/Legislative</b>	<b>Court Rules, Procedures and Forms</b>	<b>Council Organization &amp; Internal Procedures</b>	<b>Professional Responsibility</b>	<b>Education &amp; Service to the Public &amp; Members</b>
<b>Action Pending</b>	<ul style="list-style-type: none"> <li>-Prop tax uncapping exempt. (HB5552)</li> <li>-Fiduciary Access to Digital Assets (HB5366-5370)</li> <li>-PR access to online accts (SB 293)</li> <li>-Hearings minors &lt; 18 (SB 144 &amp; 177)</li> <li>-Funeral Representative (HB 5162/SB 731)</li> </ul>		<ul style="list-style-type: none"> <li>-Supreme Court Task Force Report</li> <li>-Bylaw Update</li> </ul>		<ul style="list-style-type: none"> <li>-"Who Should I Trust?" Program</li> <li>-55<sup>th</sup> Annual P&amp;EP Institute</li> </ul>
<b>Priority Items</b>	<ul style="list-style-type: none"> <li>-Domestic Asset Protection Trusts</li> <li>-ILIT Trustee Liability Protection</li> <li>-Artificial Reproductive Technology</li> <li>-Charitable Trust</li> <li>-Probate Appeals</li> </ul>	-SCAO Meetings*			<ul style="list-style-type: none"> <li>-Communications with members*</li> <li>-Social media &amp; website*</li> <li>-Brochures</li> <li>-Annual Institute/ICLE seminars*</li> <li>-Section Journal*</li> </ul>
<b>Secondary Priority</b>	<ul style="list-style-type: none"> <li>-EPIC/MTC Updates</li> <li>-Directed Investment Trusts</li> <li>-TBE Trusts</li> <li>-ADR Revision</li> <li>-Property tax on trust property</li> <li>-Uniform Real Property TOD Act</li> </ul>			-Inventory Lawyer	<ul style="list-style-type: none"> <li>-Opportunities with ICLE</li> <li>-Digital Journal</li> </ul>
<b>Priority To Be Determined</b>	<ul style="list-style-type: none"> <li>-Dignified Death (Family Consent) Act</li> <li>-Pooled income trust exclusion</li> <li>-Neglect Legislation</li> <li>-Foreign Guardians</li> <li>-Inheritance Tax</li> <li>-Estate Recovery</li> <li>-PRE after death &amp; nursing home</li> </ul>		<ul style="list-style-type: none"> <li>-Budget Reporting</li> <li>-Action on SC recommendations</li> </ul>		<ul style="list-style-type: none"> <li>-Probate Court Opinion Bank</li> <li>-Mentor program</li> </ul>

\*ongoing

# Attachment C

# 1 Proposed Section Bylaw Amendments

## Probate and Estate Planning Section of the State Bar of Michigan

Pursuant to Article IX of the bylaws of the Probate and Estate Planning Section of the State Bar of Michigan, the Council has recommended that certain amendments be adopted by a vote of the section at its 2014 annual meeting on Saturday, September 6. The recommendations from the Council include modernizing the bylaws, allowing probate registers and probate court administrators to become members of the section at no charge while they are serving in their respective capacities, clarifying the terms of the officers and Council members, allowing more extensive use of electronic communication, changing the procedure for amending the bylaws, and making other clarifications to the section bylaws. Questions regarding the Council recommendations may be directed to Nancy H. Welber at (248) 932-1230 or nhwelberpc@gmail.com.

## BYLAWS OF THE PROBATE AND ESTATE PLANNING SECTION OF THE STATE BAR OF MICHIGAN

### ARTICLE #1 NAME AND PURPOSE

**SECTION 1.1 NAME.** This Section ~~shall be~~ known as the Probate and Estate Planning Section of the State Bar of Michigan.

**SECTION 1.2 PURPOSE.** The purpose of this Section ~~shall be~~ to enhance and improve the practice and administration of law pertaining to probate; ~~trust and estate planning by the study of statutes, cases, and procedures, by the consideration, drafting, and active support or opposition of proposed legislation, by the providing of advice to courts during the course of pending litigation, and by the sponsoring of meetings and institutes (together with publishing and disseminating pamphlets, brochures, a Journal of the Section and legal writings) as a means of educating members of the Bar and the public, all in connection with advancing the proper preparation of wills, trusts, tax returns, and other documents; the efficient administration of trusts as well as estates of decedents, minors, incompetents, and missing persons; and the advance; guardianships and conservatorships (including planning for the orderly disposition of property, minimization of taxes, and well being of persons; alternatives); and tax planning.~~

### ARTICLE #2 MEMBERSHIP

**SECTION 2.1 SECTION MEMBERSHIP FOR MEMBERS OF THE STATE BAR OF MICHIGAN.** Active, inactive, law student, affiliate, and emeritus members of the State Bar of Michigan may become members of the Section by paying to the Section dues in an amount as may be determined from time to time by the Council, and ~~shall~~ will then become members of the Section for the current fiscal year. Thereafter, dues ~~shall be~~ payable in advance at the

beginning of the fiscal year of the State Bar of Michigan. Any member of the Section whose annual dues ~~shall be~~ more than six months past due ~~shall~~ will cease to be a member of this Section. Members enrolled and whose dues are paid ~~shall~~ constitute the membership of the Section. All lawyers admitted to practice in Michigan ~~shall be~~ considered members of the Section until the end of the fiscal year of the State Bar of Michigan following the year of their admission to practice and ~~shall~~ are not be required to pay dues until after that time.

**SECTION 2.** ~~Only active members of the State Bar of Michigan who are members of the Section shall be eligible to vote or hold office.~~

**SECTION 2.2 SECTION MEMBERSHIP BY PROBATE REGISTERS AND PROBATE COURT ADMINISTRATORS.** All Probate Registers and Probate Court Administrators are entitled to membership in the Section and any requirement to pay Section dues is waived. Membership in the Section under this Section 2.2, including the waiver of dues, will continue until a member under this Section 2.2 no longer serves as a Probate Register or Probate Court Administrator. If a Probate Register or Probate Court Administrator is a lawyer, then he or she will have the benefits of membership afforded to Section members who are lawyers. If a Probate Register or Probate Court Administrator is not a lawyer, then he or she will have the benefits of membership afforded to non-lawyer members of the Section.

**SECTION 2.3 ELIGIBILITY TO VOTE; COUNCIL PARTICIPATION.** ~~Only lawyers who are active members of the State Bar of Michigan and who are members of the Section are eligible to vote on any matter before the Section or to be elected as members or officers of the Council.~~

**SECTION 2.4 INVITED GUESTS.** Without a vote of the Council, the chairperson may invite guests who are not Section members to address one or more Council meetings from time to time concerning issues that the Chairperson believes will assist the Council in its consideration of particular issues that are before the Council.

### ARTICLE #3 COUNCIL AND OFFICERS

**SECTION 3.1: NUMBER OF MEMBERS AND OFFICERS.** There ~~shall be~~ a Council of the Section consisting of the Chairperson, Chairperson-Elect, Vice-Chairperson, Secretary and a Treasurer, together with 18 other members to be elected as ~~hereinafter~~ provided below. Past Chairpersons ~~shall~~ also automatically remain as ex-officio members of the Council so long as they maintain membership in the Section. However, ~~past Chairpersons shall not be~~ ex-officio members of the Council are not included in determining whether a quorum is present at any meeting and they ~~shall~~ have no right to vote on matters brought before the Council.

**SECTION 3.2: ELECTION OF OFFICERS.** The Chairperson, Chairperson-Elect, Vice-Chairperson, Secretary and Treasurer ~~shall~~ will be nominated and elected in the manner ~~hereinafter~~ provided in the following sections at each annual meeting of the Section ~~to~~. Each officer,

other than the Chairperson, will hold office for a term commencing at the beginning of the close of Section's fiscal year following the annual meeting of the Section at which they have been the officers are elected, and ending at the close of the next succeeding annual meeting fiscal year of the Section, and until their successors shall have been elected and qualified. The Chairperson's term will automatically commence after the close of the annual meeting of the Section at which the Chairperson is elected and qualified or automatically succeeds to the office of Chairperson, as provided in Section 4.2.3.

~~SECTION 3.3~~ Subject to the provisions of the next sentence, ~~six~~ **ELECTION OF COUNCIL MEMBERS.** Six members of the Council shall will be elected at each annual meeting of the Section for terms of three years. ~~At the annual meeting in 2004 only, eight member of the council shall be elected, six of whom shall serve terms of three years, one of whom shall serve a term of two years, and one of whom shall serve a term of one year. ("Year" as herein used in these Bylaws means a term beginning at on the close first day of the annual meeting at which fiscal year of the Council member shall have been elected~~ Section and ending ~~at on the close last day of the succeeding annual meeting~~ fiscal year of the Section. ~~);~~

~~SECTION 4. No 3.4~~ **TERM LIMITS FOR COUNCIL MEMBERS.** A person ~~shall be is~~ not eligible for election other than as an officer if ~~he/ or she~~ has served without interruption for six consecutive years immediately preceding the term for which the election is held.

~~SECTION 3.5. No~~ **TERM LIMITS FOR OFFICERS.** A person who has served as Chairperson, Chairperson-Elect, Vice-Chairperson, Treasurer or Secretary without interruption for 2 consecutive terms ~~shall be is~~ not eligible for election to that office.

~~SECTION 3.6~~ **VACANCY.** The Council may appoint any lawyer member of the Section who is an active member of the State Bar of Michigan as an officer or ~~councilperson~~ Council member to act until the next election in the event of death, disability, removal or resignation of any officer or ~~councilperson~~ Council member, or on a temporary basis.

## ARTICLE ~~IV~~ 4 ELECTIONS

### SECTION 4.1: NOMINATIONS.

**4.1.1 Nominating Committee.** The Nominating Committee shall will submit nominations to the Section for the offices of Chairperson, if needed, Chairperson-Elect, Vice-Chairperson, Secretary, Treasurer and members of the Council, to succeed those whose terms will expire at the close of the forthcoming fiscal year following the annual meeting of the Section at the regular meeting of the Council prior to the annual meeting of the Section, and to fill vacancies for unexpired terms existing at the time of such report at any other regular meeting of the Council. ~~;~~ The Nominating Committee shall will continue to function as needed and report nominations to the Council to fill vacancies in the office of an officer

or member of the Council in accordance with ~~Article VI, Section~~ Section 6.3. The Nominating Committee shall will consist of the three immediately past Chairpersons of the Section, unless ~~such~~ the committee shall be is otherwise appointed by the Chairperson and the Chairperson-Elect.

**4.1.2 Close of Nominations.** All nominations, including nominations from the floor, for the offices of Chairperson, if the Chairperson-Elect has given notice as provided in Section 4.2.3 that he or she will not serve as chair or there is otherwise a vacancy in the office of the Chairperson, Chairperson-Elect, Vice Chairperson, Secretary, Treasurer and members of the Council, to succeed to those whose terms will expire at the close of the fiscal year following the forthcoming annual meeting of the Section, or at the close of the forthcoming annual meeting of the Section in the case of the Chairperson, will be made at the regular meeting of the Council prior to the annual meeting of the Section.

### SECTION 2. ELECTIONS ~~4.2~~ ELECTION PROCEDURES.

**4.2.1 Vacancies.** When there is only one candidate nominated for a vacancy, that election shall will be held by voice vote at the meeting during which the nomination has been made. When there is more than one candidate nominated, the election shall will be held at the next regular council meeting where the Chairperson may conduct that election by voice vote, or may direct another method of conducting the election, such as a show of hands, paper ballot or other method. This section 4.2.1 does not apply to interim vacancies as described in section 6.3.

**4.2.2 Annual Meeting.** All nominations, including nominations from ~~of the floor, for~~ Section. Except as provided in Sections 4.1.2 and 4.2.1, the election for the offices of Chairperson; (if the Chairperson-Elect has given notice as provided in Section 4.2.3 that he or she will not serve as chair or there is otherwise a vacancy in the office of the Chairperson), Chairperson-Elect, Vice Chairperson, Secretary, Treasurer and members of the Council, ~~to succeed to those whose terms will expire at the close of the forthcoming annual meeting shall be made at the regular meeting of the Council prior to the annual meeting. The election for such offices and Council members shall will~~ be held at the annual meeting of the Section, where the Chairperson may conduct that election by voice vote, or may direct another method of conducting the election, such as a show of hands, paper ballot or other method.

**4.2.3 Automatic Succession of Chairperson-Elect.** Unless the Chairperson-Elect gives written notice to the Chairperson before the regular meeting of the Council prior to the annual meeting of the Section, the Chairperson-Elect will automatically succeed to the office of the Chairperson after the close of the Annual Meeting of the Section.

## ARTICLE ~~V~~ 5 DUTIES OF OFFICERS

**SECTION 5.1: CHAIRPERSON.** The Chairperson ~~shall preside~~ presides at all meetings of the Section and of the Council. The Chairperson

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~~shall~~ will formulate and present at each Annual Meeting of the State Bar of Michigan a report of the work of the Section for the ~~then~~ past year. The Chairperson ~~shall~~ will perform ~~such~~ other duties and acts as usually pertain to ~~such officer's~~ the Chairperson's office.

**SECTION 5.2: CHAIRPERSON-ELECT.** Upon the death, resignation or during the disability of the Chairperson, or upon ~~such officer's~~ his or her refusal to serve, the Chairperson-Elect ~~shall~~ will perform the duties of the Chairperson for the remainder of the Chairperson's term except in the case of the Chairperson's disability and then ~~only~~ during so much of the term as the disability continues. The Chairperson-Elect ~~shall~~ automatically ~~succeeds~~ succeeds to the office of the Chairperson ~~the day after the close of the annual meeting~~ ~~succeeding of the annual meeting~~ Section at which the Chairperson-Elect is elected.

**SECTION 5.3: VICE-CHAIRPERSON.** Upon the death, resignation, or during the disability of both the Chairperson and the Chairperson-Elect, or upon the refusal of both to serve, the Vice-Chairperson ~~shall~~ will perform the duties of the Chairperson and the Chairperson-Elect until either of them is again able to serve in such officer's elected capacity, to the end of the termination of the respective terms of each.

**SECTION 5.4: SECRETARY.** The Secretary ~~shall be~~ is the custodian of all books, papers, documents, and other property of the Section except money. ~~Such officer shall keep~~ The Secretary keeps a true record of the proceedings of all meetings of the Section and of the Council. ~~With~~ Along with the Chairperson, ~~such officer shall~~ the Secretary will prepare a summary or digest of the proceedings of the Section at its annual meeting for publication in the Annual Report of the State Bar of Michigan, after approval by the ~~Commissioners of the State Bar of Michigan.~~ The Secretary, along with the appropriate Section committee chair and personnel from the State Bar, will review and maintain the Section webpages on the State Bar website. The Secretary, in conjunction with the Chairperson, as authorized by the Council, attends generally to the business of the Section. ~~Commissioners of the State Bar of Michigan.~~ Such officer, in conjunction with the Chairperson, as authorized by the Council, shall attend generally to the business of the Section.

**SECTION 5.5 TREASURER.** The Treasurer ~~reports regularly on the finances of the Section to the Council and to the State Bar of Michigan.~~ The Treasurer is not responsible for the Section funds but will transmit a financial report for presentation to the membership of the Section annually. The officer of the State Bar of Michigan ~~designated for such purpose~~ will be the custodian of all funds and will keep a record of all monies received and disbursed and report ~~thereon~~ on the status of the funds to the Council or Treasurer of the Section whenever requested. ~~The Treasurer~~ Payment of expenses by the Section ~~shall not, before being paid, must be responsible for such funds but shall transmit a financial report for presentation to the membership~~ approved by the Treasurer, except those of the Section annually. **SECTION 6. TREASURER.** The Treasurer shall, which must be approved by the Chairperson or the Chairperson-Elect, or otherwise as the Council directs, and checks for all disbursements will be signed by the officer of the State Bar of Michigan

~~designated for such purpose.~~ The Treasurer will sign any application for, and execute, any bond as may be requested by any officer of the Section and/or member of the Council pursuant to any resolution ~~duly~~ adopted for any bond for the purpose of protecting the monies of the Section. Any cost or premium for ~~such~~ the bond, however, ~~shall~~ will not be borne by the Treasurer, but ~~shall~~ will be an expense of the Section and paid from the funds of the Section. ~~The Treasurer shall submit a financial report regularly.~~

#### ARTICLE ~~V~~ 6 DUTIES AND POWERS OF THE COUNCIL

**SECTION 6.1 IN GENERAL.** The Council ~~shall have~~ has general supervision and control of the affairs of the Section subject to the Supreme Court Rules Concerning the State Bar of Michigan and the Bylaws of the State Bar of Michigan and the Bylaws of the Section. ~~It shall authorize~~ The Council authorizes all commitments or contracts which ~~shall entail~~ require the payment of money and ~~shall authorize~~ authorizes the expenditure of all monies appropriated for the use or benefit of the Section.

**SECTION 6.2 COMMITTEES.** The Council may authorize the Chairperson, with the Chairperson-Elect, to appoint committees and their chairpersons from Section members to perform such duties and exercise such powers as the Council may direct. The Chairperson, on direction from the Council, ~~shall~~ will remove any chairperson or member from such committees and fill vacancies on such committees created by removal or resignation.

**SECTION 6.3 FILL INTERIM VACANCIES.** The Council, during the interim between annual meetings of the Section, may fill vacancies in its own membership or in the offices of the Vice-Chairperson, Secretary or Treasurer, or, in the event of a vacancy in both the office of Chairperson and Chairperson-Elect, then in the office of Chairperson. Members of the Council and officers ~~shall, other than the Chairperson,~~ serve until the close of the fiscal year of the Section. The Chairperson serves until the close of the next annual meeting of the Section, ~~at which the~~. The vacancies ~~shall be~~ are filled for the remainder of their respective terms by a special election conducted concurrently with the regular elections as provided in Article ~~IV~~ herein.

**SECTION 6.4 QUORUM.** A quorum of the Council ~~shall consist~~ consists of a majority of the ~~officers and elected~~ voting members of the Council then in office. A quorum being present, the Council ~~shall act~~ acts on the affirmative vote of a majority of those present at any meeting.

**SECTION 6.5 MEMBERS VOTING PROCEDURES.** A member of the Council, when ~~personally~~ present at a meeting of the Council, ~~shall~~ vote/votes in person or electronically, but when absent may communicate ~~their~~ his or her vote, in writing, upon any proposition, to the Secretary and have it counted, with the same effect as if cast personally at ~~such~~ the meeting.

**SECTION 6.6 PRESENCE AT A MEETING.** A member will be deemed "present" at a meeting if the member is physically in attendance at

the meeting or participates in the meeting by electronic communication. For purposes of this Article 6, "electronic communication" means any form of communication designed to allow a person to attend a meeting from a remote location, as long as the member's presence is identified, all participants are advised of the communications equipment, and all in-person attendees and attendees at any remote location are able to communicate effectively with each other.

**SECTION 6.7 WRITTEN VOTE.** The Chairperson of the Section at any time may, and upon the request of any member of the Council shall will, submit or cause to be submitted in writing, to each of the members of the Council, any proposition upon which the Council may be authorized to act, and the members of the Council may vote upon such proposition or propositions so submitted, by communicating their vote thereon on the proposition, in writing over their respective signatures, to the Secretary, who shall will record upon in his or her minutes each proposition so submitted, when, how, at whose request same the proposition was submitted, and the vote of each member of the Council thereon on the proposition, and keep on file such the written and signed votes. If the recorded votes of a majority of the members of the Council shall be are in favor of such the proposition, or if such a majority shall be is against such the proposition, such the majority vote shall constituteconstitutes the binding action of the Council. A submission by the Chairperson or a vote by the members by email or other electronic means is deemed to be in writing.

**SECTION 7.8 MEETINGS.** The Council shall will designate the time and place of its regular meetings. Special meetings may be called upon notice by the Chairperson or upon written request to the Secretary of any 5 members of the Council. Council and committee meetings may be held by a telephone conference or by other similar communications equipment through which all persons participating in the meeting may communicate with the other participants. All participants will be advised of the communications equipment, and the names of the participants in the conference will be divulged to all participants. Such participation will constitute presence in person at the meetingelectronic communication. A regular meeting will not take place during the annual meeting of the State Bar of Michigan, unless it is held in conjunction with the annual meeting of the State Bar.

**SECTION 8.6.9 ABSENCES** Any member of the Council (except Past Chairpersons) who shall be are absent without having been excused by the Chairperson at three consecutive meetings of the Council shall be deemed to have resignedduring a year may be removed at the discretion of the Chairperson and the vacancy thereby created shall by the member's removal will be filled by the Council. The "year" for this purpose begins on the first day of the fiscal year of the Section and ends on the last day of the fiscal year of the Section.

**SECTION 9.6.10 POWERS OF THE COUNCIL.** The powers of the Council will include the power to act to further the purposes of the Section, including the power to consider, draft, and actively support or oppose proposed legislation through committees or agents

consistent with the Bylaws of the State Bar of Michigan. The Council has the additional powers to consider, draft, and actively support or oppose proposed court rules; to further Section efforts to provide advice to courts during the course of pending litigation and sponsor meetings and institutes (together with publishing and disseminating information in print or online) as a means of educating the Bar and the public concerning the role of estate planning, guardianships and conservatorships (including planning alternatives), tax planning, trust planning and administration, and probate.

## ARTICLE VII-Z SECTION MEETINGS

**SECTION 7.1: ANNUAL MEETING OF THE SECTION.** The annual meeting of the Section shall will be held during the Annual Meeting of the State Bar of Michigan, in the same city or place as such Annual Meeting of the State Bar of Michigan, or September of each year at such other a place and time as may be arranged by the Council, with such the program and order of business as may be arranged by the Council. The annual meeting of the Section may not take place during the annual meeting of the State Bar of Michigan, unless it is held in conjunction with the annual meeting of the State Bar.

### SECTION 3:

**SECTION 7.2 SPECIAL MEETINGS.** Special meetings of the Section may be called by the Chairperson upon the approval of the Council at a time and place as the Council may determine. A special meeting may not take place during the annual meeting of the State Bar of Michigan, unless it is held in conjunction with the annual meeting of the State Bar.

**SECTION 7.3 QUORUM.** The members of the Section present at any meeting shall constitute a quorum for the transaction of business.

## ARTICLE VIII-8 MISCELLANEOUS PROVISIONS

**SECTION 8.1 FISCAL YEAR.** The fiscal year of the Section shall be is the same as that of the State Bar of Michigan.

**SECTION 2.** All bills incurred by the Section before being paid shall be approved by the Treasurer, except those of the Treasurer, which shall be approved by the Chairperson or the Chairperson elect, or otherwise as the Council shall direct, and checks for all disbursements shall be signed by an officer of the State Bar of Michigan, or someone designated by the State Bar Commissioners.

**SECTION 8.2 COMPENSATION.** No salary or compensation will be paid to any officer, Council member, or member of a committee for fulfilling his or her duties to the Section and the Council. Authorization to compensate an officer or Council member for a service to the Section by the officer or Council member or his or her law firm or other organization that is not defined by the Section's bylaws as a duty of an officer, Council member, or Section member requires a two-thirds vote of the Council. The person to be compensated, or the person whose firm or other organization is to be compensated,

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may not participate in the vote. The vote must be recorded in the minutes of the meeting, and the minutes must be made available on the Section's website.

### SECTION 8.3 WHEN EFFECTIVE.

~~SECTION 3. No salary or compensation shall be paid to any officer, councilor or member of a committee. SECTION 4. These Bylaws shall become effective upon their approval thereof by the Commissioners of the State Bar of Michigan and by the Section in the same manner provided in Article IX for their amendment.~~

~~SECTION 58.4 PRINTING.~~ All printing for the Section or for the Council or any committee of the Section ~~shall be~~ done under the supervision of the Executive Secretary of the State Bar of Michigan.

## ARTICLE ~~IX~~ AMENDMENTS

~~SECTION 9.1 PROCEDURE.~~ These Bylaws may be amended at any ~~annual~~ meeting of the Section at which a quorum is present, by a ~~majority~~two-thirds (2/3) vote of the members of the Section present and voting, provided such proposed amendment ~~shall~~has first ~~have~~ been submitted to the Council for its recommendation; ~~further, that no.~~ No amendment so adopted shall become effective until approved by the Board of Commissioners of the State Bar of Michigan.

~~SECTION 2-9.2 PROPOSED AMENDMENTS.~~ Any proposed amendment ~~shall~~must be submitted in writing to the Council ~~in the form of a motion by an officer or member of the Council or by a petition by~~ by at least ~~10 other~~three (3) members of the Section. The Council ~~shall~~will consider the proposed amendment and ~~shall if it is approved by Council, the Council will~~ prepare recommendations thereon which recommendations, together with, and provide to members of the Section a complete and accurate text of said the proposed amendment; ~~shall be published in the Michigan Bar Journal or the Journal of the Section at least 15~~thirty (30) days prior to the ~~annual~~ meeting of the Section at which it is to be ~~voted upon~~considered. Notice of the proposed amendment may be communicated in writing by in-person delivery, first-class mail, electronic mail, facsimile, publication in the Michigan Bar Journal, or by any other means reasonably likely to provide adequate written notice, including any form of notice authorized by the State Bar of Michigan.

Adopted September 14, 1955

Amended 10/14/94

Amended 9/22/00

Amended 9/27/02

Amended 9/15/03

Amended 7/23/04 Effective 9/11/04 Amended 1/21/05

Dues increase effective 6/9/06

Dues increase effective 6/19/07

# Attachment D

**TAX NUGGET**  
**June, 2014**

Treasury has issued final regulations (Regulation Section 1.67-4, 5/8/2014) on the trust/estate expenses that escape the 2% AGI floor for miscellaneous itemized deductions.

Proposed regulations were issued in 2007 indicating that costs were not deductible unless they were unique to the estate or trust. Questions subsequently arose about the deduction of investment fees, particularly bundled fees, and IRS issued new proposed regulations in 2011 (Prop Reg section 1.67-4).

The final regulations do not change those proposed regulations but indicate that some expenses may be fully deductible under code sections 62(a)(4), 162, and 164(a) and add some clarification.

Certain tax return fees are not subject to the 2% floor: estate and generation skipping transfer tax returns, fiduciary income tax returns, and the decedent's final income tax return.

Investment fees are subject to the 2% floor unless the extra amount of the fee that is generally charged to an individual investor is attributable to an unusual investment objective of the trust or estate or specialized balancing of the interest of various parties. If so the extra fee would not be subject to the 2% floor.

Appraisal fees used by an estate or trust to determine the fair market value of assets as of the decedent's date of death, to determine the value for the purpose of making distributions or as required to properly prepare estate, generation skipping or trust tax returns are not subject to the 2% floor.

The regulations list fiduciary expenses such as probate court fees and costs, fiduciary bond premiums, legal publication costs of notices, certified copies of decedent's death certificates cost, and costs related to fiduciary accounts which are not subject to the 2% floor.

The regulations are effective for tax years that begin on or after May 9, 2014. Calendar year trusts and estates who make payments of bundled costs by December 31, 2014 can take advantage of the "safe harbor" provided by Notice 2011-37.

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