

## Promoting Justice with Compassion

### To the Editor:

I think that Jim Kolosowsky's article, "Funding Expert Witnesses for Indigent Defendants," in the May 2016 issue of the *Michigan Bar Journal* is excellent.

Additional resources for expert testimony are the human attributes of sensibility and compassion. Many members of the various professions share a generosity in promoting justice. There are not infrequent instances

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in which physicians, convinced of a defendant's innocence, will provide expert evidence without charge. I know of a physician who met with a criminal defendant in jail, without a fee, to aid in the administration of justice. I believe all of the professions include persons willing to help out.

Such experts are inclined to be thorough and enthusiastic. Also, the use of such experts avoids the problem of defendants having to disclose trial strategy.

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## Reexamining Ladybird Deeds

### To the Editor:

I am pleased to see more general articles in the *Michigan Bar Journal* and encourage other members to contribute. I am especially happy to see an article on ladybird deeds ("Ladybird Deeds: Purposes and Usefulness," June 2016), a much misunderstood area. However, there are some comments I feel are necessary.

Author Kary Frank states that once the grantor dies, "The grantor's estate has no interest in the property and the property is out of the reach of creditors of the estate." The statute governing powers of appointment—the Michigan Powers of Appointment Act, MCL 556.123—disagrees:

(3) If a donee [i.e., the person who has the power of appointment] has at the time of his or her death a general power of appointment, whether or not he or she exercises the power, the personal representative or other legal representative of the donee may reach on behalf of creditors any interest that the donee could have appointed to the extent that the claim of a creditor has been filed and allowed in the donee's estate but not paid because the assets of the estate are insufficient.

There may be ways to draft against this, but this is the normal result.

Second, the author uses trigger language of the type, "If not previously disposed of prior to her death, the property is conveyed to..." The problem is that real property may be disposed of in part. Imagine that the grantor, after executing a ladybird deed of this sort, sold the property on a land contract. That is a disposal of some interests in the property, but the grantor retains the vendor's interest until the contract is satisfied in full. Imagine further that the grantor died before contract satisfaction. Who has the vendor's interest? The intended beneficiary? The grantor's estate? The problem is avoided by using a different trigger such as, "If I retain any interest in this property" or "If I fail to exercise the power of appointment completely and effectively." Furthermore, the word "dispose" is not precise. Does it include any conveyance? If so, then refinancing the property voids the ladybird deed. It is safer to use words commonly found in property law.

Third, I object to calling the intended beneficiary a "remainderperson." That term is for future interests. The Power of Appointment Act uses the term "gift in default" to describe what happens if the power of appointment is not exercised completely. Thus, the beneficiary is really the taker of the gift in default. This might make a difference. Judgment liens, for example, may attach automatically to the interests of remainderpersons.

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## MONEY JUDGMENT INTEREST RATE

MCL 600.6013 governs how to calculate the interest on a money judgment in a Michigan state court. Interest is calculated at six-month intervals on January and July of each year, from when the complaint was filed, and is compounded annually.

For a complaint filed after December 31, 1986, the rate as of January 1, 2016 is 2.571 percent. This rate includes the statutory 1 percent.

But a different rule applies for a complaint filed after June 30, 2002 that is based on a written instrument with its own specified interest rate. The rate is the lesser of:

- (1) 13 percent a year, compounded annually; or
- (2) the specified rate, if it is fixed—or if it is variable, the variable rate when the complaint was filed if that rate was legal.

For past rates, see <http://courts.mi.gov/Administration/SCAO/Resources/Documents/other/interest.pdf>.

*As the application of MCL 600.6013 varies depending on the circumstances, you should review the statute carefully.*