

2003-2004 ANNUAL REPORT  
OF THE  
PROBATE AND ESTATE PLANNING SECTION

Highlights of the 2003-2004 year of the Probate & Estate Planning Section include the following:

- **Membership Increases.** Membership in the Section increased by over 13% from just below 5,000 members in 2002-2003 to just over 5,700 members. Complementary membership is offered to new lawyers pursuant to Section bylaws, but the number of dues paying members also has re-bounded during the past two years.
- **The List Serve Thrives.** The list serve, begun in June 2003, continued to grow with over 830 practitioners now exchanging information daily.
- **The Probate and Estate Planning Certificate Program Scores.** The Probate and Estate Planning Certificate Program, inaugurated in 2003 as by the Institute for Continuing Legal Education in cooperation with the Section, has attracted over 875 practitioners in its first year.
- **Specialization Is Scrutinized.** The success of the Certificate program has encouraged the Probate and Estate Planning Council, the governing body of the Section, to investigate the possibility of proposing a State Bar sponsored Specialization in Wills, Trusts and Estate Planning. A Committee of the Council, in cooperation with ICLE, is outlining what such a specialization program might entail and might cost.
- **Principal & Income Legislation and EPIC Technical Amendments Are Passed.** Significant legislation promoted by the Section became Michigan law as of September 1, 2004. Michigan's version of the 1997 Uniform Principal and Income Act was enacted as 2004 Public Act 159, and technical amendments to the Estates and Protected Individuals Code were enacted as 2004 Public Act 314.
- **Conservatorship Controversy.** The meetings of the Council from October through March were dominated by debate concerning the nature and appropriate response to alleged abuses associated with the administration of conservatorship estates. The conservatorship controversy was fanned by a series of newspaper stories that, in turn, were based upon anecdotes and upon an October 2003 report by Michigan's Auditor General. The report of the Auditor General cited misfeasance and malfeasance by, particularly, lay conservators. The breaches of fiduciary duty allegedly were condoned or ignored by our Probate Courts. The Michigan Probate Judges Association issued a rebuttal noting that Michigan law does not mandate or fund Probate Court audits of the accounts of conservators, instead relying on interested parties to raise problems that require court intervention. The Supreme Court directed the State Court Administrative Office to review the charges in the Auditor's report. In July, 2004, the SCAO issued its interim report. The interim report found that lay conservators lack education about their fiduciary duties, but it did not find the widespread failures alleged by

the Auditor General. Meanwhile, two different sets of proposed court rules, one set drafted by a Council committee, and one set drafted by the Michigan Probate Judges Association, were suggested as an administrative response to conservatorship administration. The two sets of court rules have been tabled, and the current focus is on educating lay conservators to better understand their fiduciary duties. SCAO has organized a Conservatorship Training Materials Work Group that began meeting in August 2004. The Work Group includes two Council members, Joan Von Handorf and Douglas Chalgian.

- **Section Lobbyist Engaged.** New legislation—on topics ranging from the unanticipated new notary act to bills that would use the probate system to help collect delinquent child support—has an impact on how we practice probate and estate planning. In response to an abundance of new bills, Council in May 2004 engaged a lobbyist to monitor legislation on behalf of the Section. Public Affairs Associates of Lansing has helped the Section promote passage of Section-sponsored legislation in the past and now helps us to secure a seat at the table when bills that may affect our practice are proposed.
- **Uniformity of Practice.** Council's Uniformity of Practice Committee, through the efforts of Joan Von Handorf, analyzed the lack of uniformity among our Probate Courts and has opened discussions with the Probate Registers across the state. Council hopes to secure greater uniformity of practice or at least to greater publicity about differences in local practice.
- **Unauthorized Practice of Law.** In April, 2004, the State Bar of Michigan secured a Stipulated Order for Permanent Injunction that permanently enjoins an Indiana-based will and trust kit provider from offering legal advice and filling out forms for Michigan residents. The kit provider can market its forms and can work with a Michigan lawyer to complete forms. Thanks are due to State Bar Executive Director John Berry and to State Bar Deputy Regulation Counsel, Victoria Kremski, and to Fred Rolf of our Council for their efforts to protect Michigan consumers and our profession.
- **Uniform Trust Code Under Review.** A Council committee chaired by Mark Harder has begun review of the increasingly controversial Uniform Trust Code.
- **Amicus Briefs.** Council determined to file amicus briefs in two cases. A brief has been filed in the Matter of the John F. Ervin Testamentary Trust urging the Michigan Court of Appeals to hold that Michigan Rule of Professional Conduct 1.7 should not automatically preclude a lawyer who is representing a corporate fiduciary in a representative capacity from representing an adverse party against the same corporate fiduciary in a wholly unrelated matter. A brief also is being drafted in the appeal to the Supreme Court of a legal malpractice case: Sorkowitz V. Lakritz et al.
- **Thanks Due for Service Well Done.** In September 2004, St. Clair County Probate Judge John R. Monaghan and practitioners, Lynn Marine and Richard Shapack, are completing six years of service on the Council. Each of these fine lawyers has contributed considerably to our Section. Judge Monaghan was a judicious voice of experience, moderation and good sense, particularly during the recent conservatorship controversy. In the same controversy, Ms. Marine was an effective advocate for the interests of our larger counties. Mr. Shapack, also a

Florida lawyer, led Council in a review of possible State Bar sponsored Specialization as part of our mission to improve the level of professionalism. All three of these able lawyers will be missed, and we thank them for their assistance during the past six years. We hope that they will continue to participate on our proceedings.

- **The Section's Financial Future.** Despite having dues of only \$20 per paying member—among the lowest of State Bar Sections—our Section has maintained a healthy reserve of over \$115,000 as of the end of August, 2004. At the same time, the increasing demands on Sections funds detailed above—for our new lobbyist, for our list serve, for amicus briefs, for our programs and for our publications—have led to expenditures in excess of current annual income. Council has charged its Budget Committee to review the income and expenditures of the Council and to recommend actions to maintain our sound financial condition.

Respectfully submitted,

Henry M. Grix  
Chairperson, 2003-2004