

**2004-2005 ANNUAL REPORT
OF THE
PROBATE AND ESTATE PLANNING SECTION**

Highlights of the 2004-2005 Year of the Probate and Estate Planning Section include the following:

List Serve: The list serve which was begun in June 2003 continues to grow. This feature allows section members to exchange valuable information on a daily basis. Presently more than 872 practitioners are using the service.

Certificate Program: The Probate and Estate Planning Certificate Program inaugurated in 2003 continues to exceed all expectations. This series of intensive educational courses was under taken in cooperation with the Institute of Continuing Education (ICLE). One hundred forty two (142) practitioners have completed the program and earned certificates, and 1073 practitioners are enrolled.

Specialization: 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 cost.

Conservatorship Controversy: The Council submitted proposed amendments to court rules to the Michigan Supreme Court for their consideration. This was a result of a project undertaken in October 2003 when the Michigan Auditor General issued a report which was critical of the way probate courts handle conservatorship matters. These rules address both procedures in conservatorships and other areas of probate practice. They attempt to make improvements to the present system to better protect those individuals under conservatorship and to make other improvements in the procedures used in our probate courts. These rules attempt to maintain the principle that the probate court should be a trier of fact and not an auditor. The rules attempt to encourage the uniform administration of these protections throughout the state while allowing for courts to exercise discretion on a case-by case basis to avoid injustice in any particular case.

Sprenkle-Hill Case: The Council has followed the case of In re Estate of Ida Sprenkle-Hill, deceased, _____ Mich App ____ (2005) #248783. A decision was originally handed down in this case on October 26, 2004 in which the Court of Appeals held that a surviving spouse who met the qualifications for receiving an intestate share under MCL 700.2301 because of a premarital will was barred from taking an elective share under MCL 700.2202. The council felt this decision to be incorrect and was working on corrective legislation and joining in an appeal when the Court of Appeals issued an order vacating the first opinion and issuing a new one. The new opinion indicates that a spouse can qualify under MCL 700.2301 and still elect to take against the will. The council will continue to monitor this case.

Legislation: The council continued to monitor proposed legislation with the assistance of our section lobbyist who was engaged last year. The Council also has proposed two new pieces of legislation. The first is a statute of repose which would provide some limitations as to when an attorney can be sued for their estate planning work. The second would be a bill containing several amendments to the Estates and Protected Individuals Code making technical corrections and clarifying some areas where there is ambiguity. The Council is working with the Michigan Funeral Directors Association to improve the law governing decisions concerning burial.

Uniform Trust Code: A Council committee chaired by Mark Harder has continued reviewing section by section the Uniform Trust Code (UTC). This project was undertaken because the Council felt it would be helpful to have Michigan trust law codified. Some parts of the UTC have proven to be controversial. The Council hopes to be able to propose legislation in this area in the future.

Uniformity of Practice: The Council continues to work on the ever present problem of uniformity of practice. Our Uniformity of Practice Committee, chaired by Joan Von Handorf, has surveyed our probate courts, proposed new court forms and proposed new court rules to help make probate practice more uniform throughout Michigan.

Amicus Briefs: The Council has been active in filing amicus briefs in cases of special interest to our section members. On two occasions this year the Council was invited to file an amicus brief by the Michigan Supreme Court in cases before that Court.

Economic Survey: The Council will undertake an economic survey of its members this year and will publish the results of this survey.

Thanks Due for Service Well Done: In September 2005, Daniel E. Cogan and Ramon F. Rolf, Jr. are completing six years of service on the Council. Each of these fine attorneys has contributed greatly to our Council. Dan, who is a banker, has served as a key link between the Banker's Association and our Council in resolving issues concerning EPIC, Uniform Principal and Income Act and has worked on the Uniform Trust Code project. Fred has worked tirelessly on issues concerning unauthorized practice of law and multi disciplinary practice. Both of these individuals will be missed. We hope that they will continue to participate and contribute at our meetings in the future.

Future: The Council will continue to actively work toward bettering probate and estate planning practice. We will continue to work toward increasing our membership and expanding the services offered to members. We have increased section dues to \$25 to pay for those activities. The Council meets in regular meetings in Lansing on Saturday mornings from 9am to noon. All section members are invited to attend these meetings and to contribute. I can assure everyone that they will find it a very rewarding experience.

Respectfully submitted,

Phillip E. Harter
Chairperson, 2004-2005