Probate and Estate Planning Section

Michigan Probate and Estate Planning Journal

Volume 17, Spring 1998, No. 3
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The following is an article excerpt. The complete article was published in the Spring 1998 issue of Michigan Probate and Estate Planning Journal

FROM THE CHAIRPERSON'S DESK

By Patricia Gormely Prince

38th Annual Probate and Estate Planning Seminar

Continuing a long-standing tradition, this year's Annual Probate and Estate Planning Seminar, organized by Dick Lowe with the assistance of Karl Brevitz of ICLE, was a huge success in Traverse City and Troy.

The "Ask the Judges" panel continues to be of particular interest, as we all get to ask the judges questions (anonymously) that we might not want to ask if our identity were known! If you were unable to attend, you should consider obtaining the tapes or the materials.

The weather at the Traverse City location was the best in anyone's recent memory. Usually, we have a day of pretty nice weather, a day of so-so weather, and a day of snow. The trees were in full bloom. We had three days of gorgeous, mid-70s, sunny weather. We actually even had the Bench and Bar reception (which was well attended by probate judges) outside, and no one had to wear mittens or gloves. As your chair, I accept responsibility for this weather since, due to Council-related duties, I left my golf clubs at home.

State Bar of Michigan 63d Annual Meeting

A few years ago, the State Bar started a legal help line that is available from 9:00 a.m. to 5:00 p.m. during the three days of the annual meeting. They are always looking for volunteers. Here's your chance to give a little back to your bar. If you volunteer, make sure they know that you are a member of the Probate and Estate Planning Section.

Proposed Constitutional Changesto the Probate Court

Legislation has been introduced to merge the probate and circuit courts. At the time this column is being written, the legislation has passed the Senate and is in the House. It requires a constitutional amendment, which means that if the legislation passes, it will go before the voters in August. On March 13, 1998, the State Bar Board of Commissioners approved the following:

Motion made and seconded to adopt a policy statement that the State Bar will support a constitutional amendment on court reform that accomplishes the

following objectives: The merger of probate and circuit courts; the elimination of the necessity to have a probate court in every county; assists in and leads to the eventual merger of all trial courts (Circuit, Probate and District courts); encourages flexibility in the management of our court system; and is limited in its scope and breadth. Motion carried.

As a group, our Section may not maintain a position on legislation that is contrary to that of the State Bar without the permission of the State Bar. However, as individuals, we are always entitled to our own opinions (remember, that's part of that First Amendment/free speech stuff we learned in law school). If you have a personal opinion on the matter, contact your State Bar commissioner, your state representative, or both.

Real Estate and Trusts

There continue to be problems for clients who transfer real estate to trusts.

For example, I have a client who had a condominium in Florida transferred to his trust, and he is unable to get federal flood insurance in the name of his trust because the occupant (my client) must be the named insured. Sometimes when a residence is transferred to a trust, the owner cannot obtain insurance unless they also obtain renter's insurance! There have also been questions raised at recent Council meetings about whether or not the title insurance given to the individual when the real estate was purchased will remain in effect once the property has been transferred to his or her trust.

Mary Ann Zito, chair of our Real Property Issues Committee, is working with the Real Estate Section to see if we can form an ad hoc group to study and, hopefully, correct these and other problems. Therefore, if you have experienced problems in this area, you should contact Mary Ann Zito.

Accounting Software

The American College of Trust and Estate Council (ACTEC) recently advertised (on the Web) an accounting template that is used with the Quicken program to produce "simple and easy" fiduciary accountings and reports.

Quicken is one of the few computer programs I profess to have some expertise in, as it requires absolutely no reading of instructions or any degree of computer literacy, even in the MS-DOS version.

My copy of the software is on order, and I will report back on the ACTEC software once it is put to the test. I have just the file in mind...

If you are interested in this software, contact ACTEC on the Web at http://www.actec.org/ or by phone at (310) 398-1888.

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FAMILY LIMITED PARTNERSHIPS AND FAMILY LIMITED LIABILITY COMPANIES

By Robert Labe

Family limited partnerships and family limited liability companies (family LLCs) are popular succession planning tools. While the use of these entities is no panacea, it accomplishes many of the family's goals. The use of business entities in succession planning reduces transfer taxes and allows the parents, in their capacity as the general partners or managers, as the case may be, to retain control and manage the assets. In addition, using business entities in estate planning often reduces the costs and expenses that otherwise can be associated with administering the underlying assets of the entity.

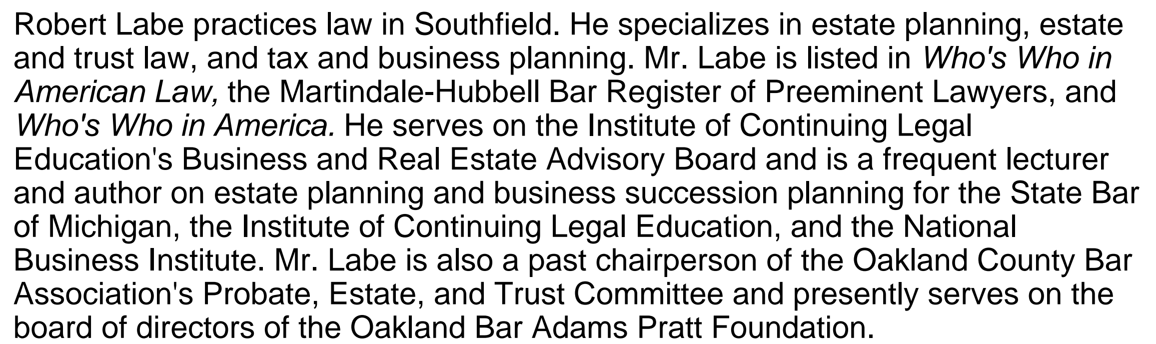
The best approach to forming a family limited partnership is to have at least two individuals contribute assets to the partnership. This ensures compliance with the basic requirements of the Michigan Revised Uniform Limited Partnership Act that there be two or more persons associated as partners, with at least one general partner and one limited partner.1 Under the Michigan Limited Liability Company Act, as amended in June 1997, an LLC may have only one member.2 However, for reasons discussed below, it is recommended that family LLCs have at least two members.

The use of business entities in succession planning reduces transfer taxes and allows the parents, in their capacity as the general partners or managers, as the case may be, to retain control and manage the assets.

Oftentimes, in creating a family limited partnership, the husband and wife each contribute property to the entity in exchange for a 1 percent general partnership interest and a 49 percent limited partnership interest. The spouses then gift their limited partnership interests to their children over a period of time. In a family LLC, the parents are the initial members and managers and gift membership interests to their children, while remaining the sole managers of the company.

1 MCL 449.1101 et seq., MSA 20.1101 et seq.

2 MCL 450.4101 et seq., MSA 21.198(4101) et seq.



Robert Labe practices law in Southfield. He specializes in estate planning, estate and trust law, and tax and business planning. Mr. Labe is listed in *Who's Who in American Law,* the Martindale-Hubbell Bar Register of Preeminent Lawyers, and *Who's Who in America.* He serves on the Institute of Continuing Legal Education's Business and Real Estate Advisory Board and is a frequent lecturer and author on estate planning and business succession planning for the State Bar of Michigan, the Institute of Continuing Legal Education, and the National Business Institute. Mr. Labe is also a past chairperson of the Oakland County Bar Association's Probate, Estate, and Trust Committee and presently serves on the board of directors of the Oakland Bar Adams Pratt Foundation.

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MAMMA ALWAYS LOVED YOU BEST: AN ALTERNATIVE TO THE FAMILY FEUD

By Tracy L. Allen

In our increasingly litigious society, conflicts in the probate arena have exploded beyond reason. The fuel inherent in a family feud, when coupled with a lawyer's quest to zealously represent the client, creates a fire that often cannot be contained. The price of battle is high, and the warriors are often drained of what was once known as common decency.

While this characterization may appear harsh, it is fast becoming reality for many practitioners who specialize in probate and estate planning. It is your worst nightmare when the client calls to say that Mother has died and that all the harmony that existed when you drafted the 50-page trust agreement went into the grave before Mom was lukewarm. Suddenly the knickknacks in the house are priceless. The diamond ring has disappeared. A large sum of money in the joint bank account was removed five days before Mom rested in peace. The evil sister-in-law is the force behind the once docile brother, who changed the locks on Mom's house while everyone was at the wake. And now you, as the lawyer (and frequently, the scrivener of the documents), are faced with the animosity and unreasonable expectations of the loved ones, who think you can represent each one of them, none of whom trust you.

There is an obvious economic rationale for proposing the private mediation format, but perhaps it is the psychological component inherent in ADR that makes it so appropriate for use in the settlement of estate and trust disputes.

No one likes to lose, yet as lawyers, we know there is rarely a winner in a lawsuit, even when your client ostensibly is the prevailing party. A common complaint of clients who survive the litigation process is that no one allowed them to fully tell their story. The judge or jury "just didn't understand." Clients who are new to the courtroom fail to realize that to allow a judge or a jury of peers to decide the dispute means surrendering decision-making control. The Latin roots of *decide* mean "to kill the alternative." While killing the opponent is usually not a viable solution, it often crosses the minds of the attorneys and the litigants.

If any of this sounds familiar, rest assured that help is here. There is an early solution to be explored with your soon-to-be-litigating client, regardless of whose

side you are defending. It's known as *alternative dispute resolution* (ADR) or, perhaps more appropriately, facilitation and mediation. ADR means creating a nonhostile environment and set of procedures to resolve a dispute while keeping control of the process. It reduces the uncertainty and hence the apprehension inherent in litigation. The use of ADR early in the process offers a reasonable prospect of shortening the time to resolution of a dispute.

Tracy L. Allen is a senior partner at Sommers, Schwartz, Silver & Schwartz, PC, in Southfield. Her practice includes work as a mediator and an arbitrator for the Chicago Board Options Exchange, the National Association of Securities Dealers, Oakland County Circuit and District Courts, and the American Arbitration Association. She received both her JD and her LLM (in taxation) from Wayne State University School of Law.

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ETHICS, UNAUTHORIZED PRACTICE, AND IMAGE

By Steven A. Mitchell

Drinking, Driving, and Your License to Practice Law

Here is a hypothetical situation that any of us can relate to, either through personal experience, through narrowly having missed this scenario as a personal experience, or through knowing someone or about someone who has gone through the experience. An attorney, let's call her Sue, was able to get away from her busy law practice for a weekend to do some skiing in northern Michigan. After a rigorous day on the slopes, during which time she ate little and drank less, she was looking for a good meal, a few drinks, and some relaxation with friends.

She and her friends decided to meet at a local watering hole before moving on to a popular local restaurant for dinner. She was tired, hungry, and thirsty, but not necessarily in that order. During the hour at the bar, where she spent her time laughing and talking with her friends, she consumed three beers. They were cold and refreshing, and they seemed to go down much easier than usual. She must have worked harder on the slopes than she had thought, because by the time they were ready to move on to the restaurant, she felt very tired.

As she started her car, she realized that she was not exactly sure of the directions to the restaurant. She was unfamiliar with the area, and after traveling about two blocks, she made a right turn and stopped the car to get her bearings. Almost immediately after she stopped, she realized that lights were flashing in her rear view mirror. A county sheriff's deputy had stopped behind her and was approaching her car. After asking for her driver's license and registration, he asked her whether she had been drinking. She responded by acknowledging that she had consumed three beers with friends at the tavern. To make a long story short, she failed several field sobriety tests, and her blood alcohol level barely exceeded the legal limit for intoxication.

Subsequently, she appeared for her court date, was offered and accepted a plea to driving while impaired, and received a typical penalty for such an infraction. Although it was her first alcohol-related offense, it nevertheless constituted a misdemeanor conviction.

About six months after performing her sentence, she read an article in a legal publication describing the impact of a misdemeanor conviction for an

alcohol-related offense on one's license to practice law.

One of the things that surprised her—and caused her no small amount of anxiety—was that in Michigan, attorneys convicted of any crime have the duty to report themselves to the Attorney Grievance Commission and the Attorney Discipline Board. MCR 9.120(A) provides, "When a lawyer is convicted of a crime, the lawyer, the prosecutor or other authority who prosecuted the lawyer, and the defense attorney who represented the lawyer must notify the Grievance Administrator and the board of the conviction. This notice must be given in writing within 14 days after the - conviction."

Sue was uncertain how to proceed. It had been more than 14 days after her conviction, and she wondered why it was necessary to report a misdemeanor drinking and driving offense to the Attorney Grievance Commission.

Simply stated, the reason it is necessary to report such a conviction is that it constitutes misconduct pursuant to MCR 9.104, which provides, "The following acts or omissions by an attorney, individually or in concert with another person, are misconduct and grounds for discipline, whether or not occurring in the course of an attorney-client relationship: . . . (5) conduct that violates a criminal law of a state or of the United States."

The language of this rule is reinforced by the holding in Grievance Administrator v Deutch, 455 Mich 149, 565 NW2d 369 (1997). In *Deutch,* an Attorney Discipline Board hearing panel dismissed disciplinary proceedings essentially because the conduct was found unrelated to the practice of law. Yet the supreme court has previously stated that lawyers must always be professional: "We cannot stress too strongly the responsibility of members of the bar to carry out their activities, both public and private, with circumspection." *In re Grimes,* 414 Mich 483, 494, 326 NW2d 380 (1982).

Accordingly, the court reversed the panel's finding of no misconduct in *Deutch* and found that the conviction constituted misconduct regardless of any relationship (or lack thereof) between the conviction and the lawyer's general fitness. 455 Mich at 153. Furthermore, this holding is also in line with existing rules.

> The license to practice law in Michigan is, among other things, a continuing proclamation by the Supreme Court that the holder is fit to be entrusted with professional and judicial matters and to aid in the administration of justice as an attorney and counselor and as an officer of the court. It is the duty of every attorney to conduct himself or herself at all times in conformity with standards imposed on members of the bar as a condition of the privilege to practice law. These standards include, but are not limited to, the rules of professional responsibility and the rules of judicial conduct that are adopted by the Supreme Court.

MCR 9.103(A).

While the Supreme Court in *Deutch* held that a misdemeanor conviction involving drinking and driving constitutes misconduct, hearing panels have broad discretion in connection with the discipline imposed: "we further hold that at the second-stage hearing, which determines the level of discipline, hearing panels do have the discretion to issue orders of discipline appropriate to the specific facts of a case, *including orders that effectively impose no discipline."* 455 Mich at 153 (emphasis added).

Therefore, while the bad news is that alcohol-related driving convictions constitute

misconduct, the good news is that the disciplinary impact of such misconduct may be minimal depending on the facts and circumstances of each case.

Since the purpose of discipline is not punishment for wrongdoing, compelling mitigating factors may indicate the imposition of no discipline whatsoever. Such factors include but are not limited to

(a) The absence of a prior disciplinary record;
(b) Cooperation with disciplinary authorities;
(c) Inexperience in life or the practice of law;
(d) Good character or reputation;
(e) Interim rehabilitation;
(f) Physical or emotional impairment caused by substance abuse; and
(g) Remorse and a sincere commitment to correct the offending behavior.

ABA Standards for Imposing Lawyer Sanctions § 9.3.

Consequently, as important as (or even more important than) the misconduct that occurs as a result of a conviction for drinking and driving is the offending attorney's response and reaction to the conviction. A lawyer who has committed misconduct should take steps to minimize the impact of a conviction on the lawyer's ability to practice law.

The punitive and disciplinary aspects of such convictions and misconduct aside, valuable resources within the State Bar are committed to assisting licensed practitioners with substance abuse problems. The Lawyer's and Judge's Assistance Program provides an opportunity for practitioners to obtain the help that they need confidentially. Hopefully, needful lawyers will obtain that help *before* the problem is further complicated by the discipline system. The program is operated through the State Bar of Michigan and can be reached at (800) 996-5522.

Steve Mitchell is a shareholder at Willingham & Coté, PC, where he concentrates his practice on the defense of lawyers and judges in professional disciplinary proceedings. Your questions or comments are welcome at (800) 361-1542.

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RECENT DECISIONS IN MICHIGAN PROBATE, TRUST, AND ESTATE PLANNING LAW

By Hon. Phillip E. Harter

Case summaries of new appellate cases, court rules, and statutes affecting the probate court may be found at the Calhoun County Court's Web site at http://courts.co.calhoun.mi.us.

GUARDIANS—DEVELOPMENTALLY DISABLED PERSON—STERILIZATION OF WARD

In re Wirsing, 456 Mich 467, 573 NW2d 51 (1998)

Lora Faye Wirsing was adjudicated to be a developmentally disabled person due to mental retardation in 1981. Her mother was appointed as her plenary guardian under the Mental Health Code. In 1986, the guardian petitioned the probate court for authorization to consent to sterilization of the ward for birth control purposes. The probate court granted such authorization after an extensive hearing. In 1992, the Michigan Supreme Court remanded the case to the court of appeals, "to consider, without limitation, whether probate judges possess the power to authorize a guardian to consent to the sterilization of a developmentally disabled citizen." *In re Wirsing,* 441 Mich 886, 886, 495 NW2d 388 (1992). The court of appeals reversed the probate court, concluding that the probate court did not have the jurisdiction or power to authorize the guardian of the ward to allow the ward's surgical sterilization. The guardian appealed to the Michigan Supreme Court.

The Michigan Supreme Court stated that the issue it was asked to decide was whether a probate court has the statutory authority to permit the plenary guardian of a ward to consent to a tubal ligation of the ward for birth control purposes. In reversing the court of appeals, the justices concluded that the probate court does have such authority. They found that the court of appeals majority had failed to distinguish between the unfortunate history of forced eugenic sterilization and the separate concept of voluntary sterilization. The ward was unable to exercise an important right. She was unable to choose for herself whether she wished to become pregnant. To deprive her of the option of sterilization would make the choice for her, and make the same choice for each ward, regardless of the circumstances. The legislature has instead provided a mechanism designed to

encourage a guardian, on concluding it is in the ward's interests, to apply to the probate court for an order authorizing consent for an extraordinary procedure such as sterilization. The probate court shall then evaluate the case and, if it is persuaded and finds that the procedure is in the ward's best interest, order the authorization of consent.

In summary, the Michigan Supreme Court held that the probate court has jurisdiction to hear an application by a guardian for authorization to consent to an extraordinary procedure under MCL 330.1629, MSA 14.800(629), including sterilization, and to authorize such a procedure if it determines the procedure is in the ward's best interests.

The Honorable Phillip E. Harter has been a Calhoun County Probate Court judge in Battle Creek since 1984 and chief judge since 1992. He has served as chairperson of the Probate Rules Committee of the Michigan Probate Judges Association and on the advisory committee and as a faculty member of the Michigan Judicial Institute. He has been admitted to the bars of the U.S. Supreme Court and the U.S. Court of Appeals. He is a fellow of the Michigan State Bar Association and a member of the Probate and Estate Planning Section of the State Bar of Michigan and of the Calhoun County Bar Association. He is a frequent lecturer and writer on probate topics.

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DIGEST OF MICHIGAN PROBATE OPINIONS

By Patrick Boland

98-1
Capacity; Fiduciary; Presumption; Summary Disposition; Undue Influence. Denny v Ferguson; Judge Milton L. Mack, Jr., Wayne County. The 80-year-old decedent had drafted a will in which she devised her home to the plaintiff because the plaintiff did not own her own home. This document also appointed the defendant as the decedent's patient advocate. Twenty months later, the decedent quitclaimed her home to the defendant for $1. The decedent died one month later. The plaintiff's affidavit states that the decedent was forgetful and confused in her later years and that the deed was the result of undue influence. The defendant's affidavit was to the contrary. The defendant brought a motion for summary disposition.

The test to determine whether summary disposition is appropriate is whether the kind of record which might be developed, giving the benefit of any reasonable doubt to the nonmoving party, would leave open an issue on which reasonable minds might differ. The court will be liberal in finding a genuine issue of material fact and will not weigh the credibility of affidavits, particularly if motive or intent is at issue. The court will not make findings of fact or weigh credibility in deciding a motion for summary disposition.

Assuming, as the court must, that the facts stated in the plaintiff's affidavit are true, the defendant's motion for summary disposition must be denied. MCR: 2.116(C)(8); 2.116 (C)(10); 2.116(G)(4); 21 Mich App 266; 47 Mich App 299; 144 Mich App 750; 152 Mich App 281; 193 Mich App 257; 206 Mich App 27; 370 Mich 223; 121 NW2d 432; 175 NW2d 849; 209 NW2d 452; 376 NW2d 400; 393 NW2d 610; 483 NW2d 624; 520 NW2d 670.

98-2
Antilapse Statute; Joint Will; Right of Representation. In the Matter of the Estate of Georgia Price Hudson, Deceased; Judge Milton L. Mack, Jr., Wayne County. The petitioner's mother was a beneficiary under a joint will drafted for the deceased and her husband. The petitioner's mother predeceased the joint testators. The petitioner claims under the will pursuant to Michigan's antilapse statute. The petitioner's mother predeceased the deceased husband.

Michigan courts favor the application of the antilapse statute and of taking by right

of representation over per capita distribution. Thus, the antilapse statute applies unless there is clear and unequivocal evidentiary language in the will regarding a contrary distribution scheme. In the particular facts before the court, no such language exists. Furthermore, applying the antilapse statute in this case is consistent with the intent of the joint testators, who, by the mere creation of a joint will, made sure that the order in which they died would be irrelevant in determining distribution to their heirs. MCL: 700.106; 700.134; 700.134(1); MSA: 27.5106; 27.5134; 27.5134(1); 159 Mich App 120; 406 NW2d 483.

98-3
Election; Equitable Estoppel; Summary Disposition; Unclean Hands. In the Matter of the Estate of Michael J. Bonkowski, Deceased; Judge Milton L. Mack, Jr., Wayne County. The petitioners originally filed a petition for the appointment of a guardian for the deceased, but the guardians ad litem felt that the deceased did not need a guardian or a conservator and moved to terminate the guardianship. The settlement of the matter involved the creation of a trust that named the respondent as the sole beneficiary. All parties had copies of the trust before adjudication, and no objections were made. Later, the deceased deeded certain realty to the petitioners, who later sold the realty. After the deceased's suicide, the petitioners challenged the deceased's testamentary capacity and further stated that the presumption of undue influence by the respondent acted as a bar to equitable defenses such as unclean hands.

Two of the equitable theories under which a party may be barred from challenging a will include the doctrines of equitable estoppel and election. Equitable estoppel arises when a party, by silence, induces another party to believe facts, on which the other party justifiably relies, creating prejudice if the first party is allowed to deny the existence of the facts. Election, on the other hand, focuses on the conduct and knowledge of the contestants, without requiring a showing of prejudice. The deceased justifiably relied on the petitioners' silence at the settlement in regards to his testamentary capacity, and his death prejudiced his ability to defend that capacity. Furthermore, petitioners were "blowing hot and cold" in regard to the decedent's capacity by accepting the benefits of the sale of realty subsequent to the adjudication of the trust. Thus, the petitioners' claims are barred by the doctrines of equitable estoppel and election. Issues regarding undue influence were not made timely—at the adjudication of the trust—and will not bar the remedy of equitable estoppel or election. MCR: 2.116(C)(7); 2.116(C)(10); 50 Mich 119; 127 Mich App 287; 203 Mich App 435; 221 Mich App 273; 15 NW 42; 338 NW2d 387; 513 NW2d 148; 561 NW2d 130.

98-4
Fraud (Extrinsic); Fraud (Intrinsic); Res Judicata; Statute of Limitations; Summary Disposition. In the Matter of the Estate of James T. Barnes, Sr., Deceased, and the James T. Barnes, Sr., Revocable Trust Agreement Under Date of May 26, 1978; Judge Milton L. Mack, Jr., Wayne County. The deceased's trust held as its main asset the deceased's company's B stock, which the deceased had previously pledged as security for a loan agreement with two banks. The son later became the majority shareholder of the company and was named as personal representative of the deceased's estate and a co-trustee of the deceased's trust. The deceased's company and the banks subsequently reached a settlement agreement in which his son pledged his own A and common stock as a limited personal guarantee. All this information was disclosed in a 1980 settlement agreement. The company later sold some bank stock at a profit. In 1986, although the son did not disclose this sale to either the beneficiaries or the court, the beneficiaries, under the belief that the asset of the trust was insolvent, allowed the company to redeem the B stock, releasing the son's interest for tax purposes. The beneficiaries claimed that the son fraudulently induced them into releasing his interest in the B stock. The son brought this motion for rehearing on

the denial of his motion for summary disposition (see Case 97-20).

Michigan follows a broad rule of res judicata that bars claims that have actually been previously litigated as well as those arising out of the same transaction that the parties could have raised but did not. A fraud exception to the res judicata rule applies for extrinsic fraud—fraud that is outside the facts of the case, such as fraud with regard to filing a return of service. This exception does not extend to intrinsic fraud. Rather, the sole remedy for intrinsic fraud is a motion seeking relief from judgment.

In this case, the beneficiaries' allegations of fraud fall squarely within the definition of intrinsic fraud; thus, the fraud exception to the res judicata rule does not apply. In addition, having failed to allege extrinsic fraud, their claim against the son is time barred by the statute of limitations. MCL: 700.818. MSA: 27.5819. MCR: 2.116(C)(7); 2.116(C)(10); 2.612(C). 375 Mich 330; 394 Mich 327; 409 Mich 147; 444 Mich 170. 147 Mich App 70; 213 Mich App 310; 134 NW2d 764; 231 NW2d 57; 294 NW2d 165; 382 NW2d 734; 507 NW2d 194; 539 NW2d 587.

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Probate and Estate Planning Section

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LEGISLATIVE REPORT

By Douglas A. Mielock

Michigan legislation is available at the Michigan Legislature Web site, located at http://michiganlegislature.org.

HB 4649—Delivery of Decedent's Cash and Wearing Apparel
Sponsor: Representative Schroer
Introduced: April 22, 1997
Current Status: Referred to the House Judiciary Committee (April 22, 1997)

MCL 700.103, MSA 27.5103 authorizes a hospital, convalescent or nursing home, morgue, or law enforcement agency holding cash and wearing apparel of a decedent to deliver such property to a spouse, child, or parent of the decedent. HB 4649 increases, from $100 to $500, the amount of cash that may be delivered pursuant to this statute.

HB 5452—Estate Recovery—Amendment to the Social Welfare Act
Sponsor: Representative D. Olshove
Introduced: January 14, 1998
Current Status: Referred to the House Human Services and Children Committee (January 14, 1998)

HB 5452 amends the Social Welfare Act to provide that the amount of medical assistance paid on behalf of a person receiving medical assistance under the social welfare act is not a claim against (1) the estate of the recipient following the death of that recipient or (2) the estate of a deceased spouse who survived the recipient. It also provides that the State of Michigan shall not impose a lien against real property of a recipient before or after his or her death to secure amounts properly paid for medical assistance on behalf of the recipient.

HB 5541—Standby Guardian
Sponsor: Representative D. Gubow
Introduced: February 5, 1998
Current Status: Referred to the House Judiciary Committee (February 5, 1998)

HB 5541 amends sections of the Revised Probate Code to add provisions for a new type of guardian, designated a "standby guardian." Under the bill, a standby guardian may be appointed for a minor child on petition by the minor child's

parent or guardian. Among other things, the petition must state (1) that there is a significant risk of the parent's or guardian's death, incapacity, or debility as a result of a progressive chronic condition or fatal illness and (2) the triggering event or events that would activate the authority of the standby guardian.

HB 5612—Roth IRA Creditor Protection
Sponsor: Representative S. Thomas III
Introduced: February 25, 1998
Current Status: Passed by the House on March 26, 1998

HB 5612 amends the Revised Judicature Act of 1961 (MCL 600.6023, MSA 27A.6023) to provide that an individual retirement account or individual retirement annuity as defined in IRC § 408A (a Roth IRA) is included in the list of debtor's property exempt from levy and sale under any execution. This bill is similar to HB 5648 and SB 856.

HB 5643—Michigan Uniform Transfers to Minors Act
Sponsor: Representative L. Baird
Introduced: March 10, 1998
Current Status: Referred to the House Commerce Committee (March 10, 1998)

HB 5643 repeals the Michigan Uniform Gifts to Minors Act and replaces it with the Michigan Uniform Transfers to Minors Act. HB 5643 provides that the custodian shall transfer the custodial property to the minor on the minor becoming 18 years of age unless, at the time of the initial transfer to the custodian, a later time is specified. However, in no event may the transfer of the custodial property to the minor be delayed beyond the minor's 21st birthday.

HB 5645—Michigan Uniform Prudent Investor Act
Sponsor: Representative L. Baird
Introduced: March 10, 1998
Current Status: Referred to the House Commerce Committee

HB 5645 adopts the Uniform Prudent Investor Act.

HB 5647—Uniform Statutory Rule Against Perpetuities
Sponsor: Representative L. DeVuyst
Introduced: March 10, 1998
Current Status: Referred to the House Commerce Committee

HB 5647 amends the Michigan Uniform Statutory Rule Against Perpetuities, MCL 554.72, MSA 26.48(2) to add language that would prevent an irrevocable trust from inadvertently losing its grandfathered status under the generation-skipping transfer tax by reason of an exercise of a power of appointment under the trust that attempts to extend the term for a period that is the later of the common law rule against perpetuities period or the uniform statutory rule against perpetuities period (90 years).

HB 5648—Roth IRA Creditor Protection
Sponsor: Representative J. Scranton
Introduced: March 10, 1998
Current Status: Referred to House Commerce Committee

HB 5648 amends the Revised Judicature Act of 1961 (MCL 600.6023, MSA 27A.6023) to provide that an individual retirement account or individual retirement annuity as defined in IRC § 408A (a Roth IRA) is included in the list of debtor's property exempt from levy and sale under any execution. It is similar to HB 5612 and SB 856.

HB 5686—Uniform Anatomical Gift Act

Sponsor: Representative L. Baird
Introduced: March 12, 1998
Current Status: Referred to the House Health Policy Committee

HB 5686 repeals certain portions of the Public Health Code and adds new sections consisting of the Uniform Anatomical Gift Act.

HB 5708—Uniform Fraudulent Transfer Act
Sponsor: Representative A. Richner
Introduced: March 19, 1998
Current Status: Referred to House Commerce Committee

HB 5708 repeals the Uniform Fraudulent Conveyance Act (MCL 566.11–566.23, MSA 26.881–893) and adopts the Uniform Fraudulent Transfer Act.

SB 80—Medical Self-Determination
Sponsor: Senator J. Berryman
Introduced: January 28, 1997
Current Status: Referred to the Senate Health Policy and Senior Citizens Committee (January 28, 1997)

SB 80 allows an individual 18 years of age or older who is of sound mind to execute a declaration to authorize types of medical intervention or the withholding or withdrawal of medical intervention if the declarant is terminally ill or permanently unconscious and unable to participate in medical treatment - decisions.

SB 209—Estate Settlement Act
Sponsor: Senator W. Van Regenmorter
Introduced: February 19, 1997
Current Status: Passed by Senate (37-1); now before the House Judiciary Committee

SB 209 repeals the Revised Probate Code and replaces it with the Estate Settlement Act.

SB 417 and 418—Abolishment of the Doctrine of Adverse Possession
Sponsor: Senator J. Conroy
Introduced: April 22, 1997
Current Status: Referred to the House Judiciary Committee (April 22, 1997)

SB 417 and SB 418 amend MCL 565.101, 600.5801, and .5867, MSA 26.1271, 27A.5801, and .5867, and adds a section 600.5867A to abolish the doctrine of securing title to real property by adverse possession, effective beginning on the effective date of the acts. SB 417 and SB 418 are tie-barred.

SB 671—Michigan Medical Treatment Decisions Act
Sponsor: Senator C. Dingell
Introduced: July 10, 1997
Current Status: Referred to the Senate Judiciary Committee (July 10, 1997)

SB 671 authorizes the making of medical treatment decisions for a patient when the patient is unable to participate in medical treatment decisions and does not have a patient advocate or guardian. Under the bill, the following individuals are authorized to make medical treatment decisions for the patient, in the following order of priority: (1) the patient's spouse, (2) an adult child of the patient, (3) a parent of patient, (4) an adult sibling of the patient, (5) an adult grandchild of the patient, or (6) a grandparent of patient.

SB 754—Michigan Estate Tax Act—Technical Amendments

Sponsor: B. Bullard, Jr.
Introduced: October 14, 1997
Current Status: Passed by the Senate on February 24, 1998; Referred to the House Tax Policy Committee on February 25, 1998

SB 754 amends the Michigan Estate Tax Act, MCL 205.240 et seq., MSA 7.591(10) et seq., to provide that references in the act to the "Internal Revenue Code" refer to the United States Internal Revenue Code of 1986, in effect on January 1, 1998.

SB 775—Trusts as Shareholders of Professional Service Corporations
Sponsor: Senator M. Bouchard
Introduced: October 29, 1997
Current Status: Passed by the Senate on November 5, 1997; Passed by the House on March 11, 1998; Ordered enrolled on March 12, 1998. 1998 PA 48.

SB 775 amends the Professional Service Corporation Act to expand the class of permitted shareholders of a professional service corporation to include a "trust or split interest trust, in which the trustee and the current income beneficiary are both licensed persons in a professional corporation." MCL 450.230, MSA 21.315(1).

SB 808—Family Division of Circuit Court
Sponsor: Senator W. Van Regenmorter
Introduced: November 13, 1997
Current Status: Passed by the Senate on February 10, 1998; Referred to the House Judiciary Committee on March 11, 1998

SB 808 provides that the chief circuit judge and chief probate judge of each judicial circuit shall enter into an agreement that establishes a plan for how the family division will be operated in that circuit and how the services of various agencies will be coordinated to promote more efficient and effective services to families and individuals.

SB 824—Elimination of Jackson County Probate Judge; Addition of Kalamazoo County Probate Judge
Sponsor: Senator P. Hoffman
Introduced: December 2, 1997
Current Status: Passed by the Senate on February 19, 1998; Passed by the House on March 3, 1998; Ordered enrolled on March 19, 1998. 1998 PA 55.

SB 824 modifies the Revised Judicature Act of 1961 (MCL 600.803, MSA 27A.803) to provide that effective January 1, 1999, Jackson County will have only one probate judge (a decrease from the previous two probate judges) and Kalamazoo County will have three probate judges (an increase from the previous two probate judges).

SB 856—Roth IRA Creditor Protection
Sponsor: Senator G. Peters
Introduced: January 28, 1998
Current Status: Passed by the Senate on February 25, 1998; Passed by the House on March 26, 1998; Ordered enrolled on March 26, 1998. 1998 PA 61.

HB 5648 amends the Revised Judicature Act of 1961 (MCL 600.6023, MSA 27A.6023) to provide that an individual retirement account or individual retirement annuity as defined in IRC § 408A (a Roth IRA) is included in the list of debtor's property exempt from levy and sale under any execution. It is similar to HB 5612 and HB 5648.

HJR EE—Constitutional Amendment—Structure of Trial Courts
Sponsor: Representative N. Ciaramitaro
Introduced: February 11, 1998
Current Status: Referred to the House Judiciary Committee (February 11, 1998)

HJR EE proposes an amendment to the state constitution that would provide for one trial court of general jurisdiction. The probate court would be eliminated. The state would be divided into judicial "units" along county lines.

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