Uniformity of Practice Across Courts is Only *One* Ideal

To the Editor:

Although for some the "Quest Continues for Uniformity of Practice in Probate Courts" (October 2007 *Michigan Bar Journal*), there are reasons to raise questions about the project.

Uniformity of practice across courts is an ideal, but only one ideal. There is at least one other competing ideal vis-à-vis the courts—i.e., the reasonable tailoring of practice to the specific conditions of caseload, philosophy, and location. How these are balanced is one question, but to question that there should even *be* a balance is unrealistic. To see this, a few myths should be dispelled.

From the recent article on probate court variability, one might conclude that probate courts are somehow rogue holdouts to trial court uniformity. This is not the case. In district courts, there are inter-court differences in the processing of many things, including small claims cases, landlord/tenant matters, fines and costs, and minor-in-possession actions. Circuit courts also lack uniformity, as with whether precipes are used, whether judges' copies are required, where the seven-day rule notice is to be submitted, and whether a motion card is to be used in lieu of a notice of hearing. There is also general lack of uniformity in the appointment, assessment, and payment of indigent defense counsel. In short, inter-court variation is the norm.

The multiplicity and detail of court rules and SCAO forms concerning probate matters guarantee a substantial amount of uniformity across Michigan's probate courts. Be that as it may, probate courts, each with its own chief judge, are not identical (as neither are circuit or district courts). The recent article mentions variation in the amount charged for a certified copy of letters of authority, the inventory fee charged for no-asset decedent estates, whether an affidavit of incumbency must be filed by the trustee of a devisee trust, and policies in place for the valuation of assets on inventories and accounts. Rather than being the result of caprice, these differences have at least a partial basis in codified judicial discretion.

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A probate court may "make any proper orders to fully effectuate its jurisdiction and decisions" [MCL 600.847], and the Michigan Supreme Court's own Probate Court Fee and Distribution Schedule explicitly recognizes that the court may exercise its discretion to waive fees (supposedly in whole or in part). With such authority for judicial discretion, what do proponents for uniformity of practice expect? That judicial discretion be completely ceded in the name of inter-court predictability?

With these questions in mind, the article's reaction to the recent clarification on inventory fee valuations is telling. Although *Wolfe-Haddad* has now established uniformity in that all probate courts now will not allow the deduction of liens in calculating an estate inventory (translating into a higher inventory fee for an estate), the article even so supports a move to reverse the decision through statutory amendment. Hence, it may be that uniformity of practice is not the sole agenda.

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Two Thumbs Up for Plain Language

To the Editor:

Joe Kimble's multi-part article, "Lessons in Drafting from the New Federal Rules of Civil Procedure" was great. It was the clearest explanation of the basic problems of legal writing that I have ever read. Not only did he discuss a well-known, real-life example of legal writing, but, best of all, he succeeded in changing it.

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