

Probate

ESTATE PLANNING

WITH OVER 5,700 MEMBERS, the Probate and Estate Planning Section is the largest practice section of the State Bar of Michigan. For many Section members, probate and estate planning is only a part of their law practice, while for others, it is the focus of their practice. The articles in this month's *Bar Journal* cover a broad cross section of the practice and will be helpful to all of our Section members.

ELDER LAW AND MEDICAID

With more Americans attaining senior citizen status (and living longer), Doug Chalgian's article on elder law and Medicaid planning provides a glimpse into this dynamic and ever-growing area of practice. Mr. Chalgian informs us that Michigan has recently adopted a program that permits some Medicaid-eligible nursing home candidates to remain in their personal residences while receiving Medicaid assistance, thus avoiding an institutional setting for those fortunate enough to qualify for Michigan's new Home and Community Based Waiver Services Program. He shares the latest from Lansing on the (dreaded) prospect of estate recovery for Medicaid recipients. Estate recovery has been a requirement under federal law since 1993, but has not (yet) been implemented in Michigan. With Michigan's looming budget crisis, it may be only a matter of time before estate recovery becomes a reality in Michigan. This article also points out the need to be aware of the financial exploitation that is occurring with the improper sale of annuities to senior citizens.

UNIFORMITY OF PRACTICE ISSUES

Joan Von Handorf's article provides a comprehensive comparison of the different practice issues and procedures that probate practitioners are confronted with in the Michigan probate courts. Although the probate courts strive to be uniform in their application of the law and the requirements of the Michigan Court Rules, differences and local customs are a reality. Her article highlights many of the major differences and customs in the courts, and provides practical solutions to deal with this lack of uniformity in the areas of forms, decedents' estates, guardianships, and conservatorships. Ms. Von Handorf, who is the Co-Chair of the Uniformity

of Practice Committee of the Probate and Estate Planning Section, is actively working with the Michigan Supreme Court Administrator's Office (SCAO) to deal with these issues and assist the SCAO in its implementation of a more uniform probate system throughout Michigan.

NEW PRINCIPAL AND INCOME ACT

Finally, Jim Gamble's article informs probate and estate planning practitioners of the new principal and income rules that took effect September 1, 2004. These rules are important not only in the administration of probate estates and trusts, but also in the drafting of wills and trusts. As he points out, estate planners may need to modify or expressly opt out of some of the new rules when preparing wills and trusts for their clients. Because the new rules are the "default" rules, practitioners can adopt all, some or none of the rules in their client's estate planning documents. Of particular concern to most estate planners is the new rule that permits a trustee to make adjustments between income and principal and transfer "principal" to "income" and vice versa. This ability to adjust is a powerful tool, particularly in the marital deduction trust context, especially in second marriage situations. Estate planners should also take note of the new principal and income rule's effect on retirement benefits, the ability to make equitable adjustments for tax elections, and the rule's effect on spousal income requirements for QTIP and general power of appointment marital deduction trusts. His overview of the new rules is adapted from his upcoming book, which is anticipated to be available for purchase from The Institute of Continuing Legal Education, www.icle.org, (877) 229-4350, in Spring 2005.

Sebastian V. Grassi, Jr., Chairperson
Probate and Estate Planning