

# View from the Probate Counter

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Every year Michael McClory from Wayne County Probate Court and I make a presentation at the annual Probate and Estate Planning ICLE Conference. Our intention is to bring to practitioners everyday practical questions and concerns that we see at the Probate counter. This year's presentation in Traverse City also included Cheboygan County Register Patricia Hansen. Below are highlights from our presentation:

## **New Court Rules/Legislation**

- MCR 5.12(C)(6), which was effective September 1, 2004, added additional individuals as "interested persons" for proceedings in examination of a fiduciary account. It reads, "Such other persons whose interest would be adversely affected by the relief requested, including insurers and sureties who might be subject to financial obligations as the result of the approval of the account."
- MCR 5.784, which was effective March 8, 2005, authorizes a medical durable power of attorney to provide a patient advocate with authority to make mental health treatment decisions.
- PA 314, which was effective September 1, 2004, contains a variety of amendments to EPIC, most of which concern estate planning and trusts. They include:
  - 1) Definition of an interested person now includes an incumbent fiduciary (MCLA 700.1105(c));
  - 2) Adds the following intestate succession provision: a child not conceived or born during marriage is considered born in wedlock if the child's parents marry after the child's birth or conception (700.2114(1)(c));
  - 3) Personal representative's power was expanded with respect to estate tax election (700.3715(2)(e));
  - 4) Clarifies that a one-year statute of limitation for breach of trust begins to run from the date the beneficiary or the beneficiary's representative was sent a report disclosing the existence of the potential claim (700.7307(1));
  - 5) Requires that a claimant who improperly receives trust property must return it (along with any income or gain) unless barred by adjudication, estoppel or other limitation (700.7410).
- PA 204 and PA 343, which were effective on September 29, 2004, permits the court on its own motion or per

petition by an interested party to appoint a special personal representative to supervise disposition of the body of a decedent who has insufficient assets to pay for the funeral, died intestate or is without heirs (this adds subsection (c) to MCLA 700.3614).

- Several significant amendments were made to the Mental Health Code through 2004 – Public Acts 532, 551-447 and 559, effective December 31, 2004. These were outlined in my June 2005 article regarding Kevin's Law, which created an assisted outpatient treatment petition process.

## **Probate Court Web sites**

Every year, Mike and I do a survey of the Probate courts that maintain Web sites. Currently, more than 55 Probate courts in Michigan either have their own Web site or have partnered with another local county in theirs. If you would like the list containing all of the Probate courts' addresses, phone numbers, fax numbers and Web sites (if they have one), please contact me and I will make sure one is provided to you.

Also worth noting is a Probate Web site established by Judge Harter in Calhoun County that contains a listing of over 500 EPIC questions and answers. This site can be found at <http://courts.co.calhoun.mi.us>. Simply click on "Court EPIC Questions and Answers" for easy reference. This site also contains many articles on Probate procedures and a summary of the new cases that are relevant to Probate courts. Judge Harter has also established a method to submit questions regarding EPIC. Please e-mail your questions to [pharter@internet1.net](mailto:pharter@internet1.net), or by mail to Hon. Phillip E. Harter, Chief Judge, Calhoun County Probate Court, 161 E. Michigan Ave., Battle Creek, MI 49014.

I encourage people to visit their local courts' Web sites. These Web sites have valuable information including frequently asked questions and links to forms, and contain local policies or procedures established by the local Probate courts.

In the next few months I will highlight practice tips, common questions and court policies also outlined in our presentation. Stay tuned!