

**JULY 2018 MICHIGAN BAR EXAMINATION
EXAMINERS' ANALYSES**

EXAMINERS' ANALYSIS OF QUESTION NO. 1

Estates in Michigan are statutorily governed by the Estates and Protected Individuals Code ("EPIC"), MCL 700.1101 et al.

1. The February 2, 2015 document that Mattie signed constituted a valid will. All valid wills require that the testator be at least 18 years old and have "sufficient mental capacity." MCL 700.2501(1). The facts state that at the time that document was created, Mattie was age 52 and had the mental capacity to execute it. Therefore, those requirements were met.

In addition, generally a will must be (a) in writing, (b) signed by the testator, and (c) signed by at least two persons who witnessed either the signing of the will by the testator or the testator's acknowledgment of the signature or of the will. MCL 700.2502(1)(a)(b)(c). The facts reflect that each of these requirements were met. The document was typewritten, signed by Mattie the testator, and signed by both Serena and Anna. Even though Serena and Anna are the only two witnesses to the document and are the only persons designated to take under the will, the will is not rendered invalid as a result. According to MCL 700.2505, "[t]he signing of a will by an interested witness does not invalidate the will or any provision of it."

2. Mattie's subsequent statement and writing over a year later, would have no bearing on the 2015 document. Although her statements were testamentary in nature, Mattie had already suffered a closed head injury at the time she made them. The facts indicate that her memory was "severely impaired" as a result of the injury. Additionally, Mattie articulated that she did not know what personal or real assets she possessed. As

noted above, individuals must have sufficient mental capacity in order to create a will. MCL 700.2501(1). According to EPIC, a person's mental capacity is sufficient only if each of the following are satisfied:

- (a) The individual has the ability to understand that he or she is providing for the disposition of his or her property after death.
- (b) The individual has the ability to know the nature and extent of his or her property.
- (c) The individual knows the natural objects of his or her bounty.
- (d) The individual has the ability to understand in a reasonable manner the general nature and effect of his or her act in signing the will. MCL 700.2501(2).

Under these requirements, the effects of Mattie's head trauma, including confusion about what assets she had to distribute, would render her mental capacity insufficient to enable her to make a valid will of any sort, whether traditionally (MCR 700.2502 (a)-(c)); holographically (MCR 700.2502 (2)), or by other clear and convincing evidence (MCR 700.2503)).