MEETING OF THE COUNCIL OF THE
PROBATE AND ESTATE PLANNING SECTION OF
THE STATE BAR OF MICHIGAN

March 14, 2015 -- Lansing, Michigan

MINUTES

I. Call to Order. The Chair called the meeting of the Council of the Probate and Estate Planning Section to order at 10:20 a.m.

II. Attendance. Guests were introduced.

A total of 4 officers and 16 members of the Council were present, representing a quorum.

A. The following 4 officers of the Council were in attendance:

Amy N. Morrissey, Chair
James B. Steward, Vice-Chair
Marlaine C. Teahan, Secretary
Marguerite Munson Lentz, Treasurer

B. The following 16 members of the Council were in attendance:

Susan M. Allan   David P. Lucas
W. Josh Ard      Raj A. Malviya
Christopher A. Ballard Richard C. Mills
George F. Bearup Lorraine F. New
Constance L. Brigman David L.J.M. Skidmore
Rhonda M. Clark-Kreuer James P. Spica
Hon. Michael L. Jaconette Geoffrey R. Vernon
Mark E. Kellogg   Nancy H. Welber

C. The following 1 officer and 2 members were absent with excuse:

Shaheen I. Imami, Chair Elect Michele C. Marquardt
Patricia M. Ouellette

D. The following ex-officio members of the Council were in attendance:

Robert D. Brower, Jr. Phillip E. Harter
George W. Gregory Michael J. McClory

E. The following guests were in attendance:

J.V. Anderton Robert O'Reilly
Lynn Chard Nathan R. Piwowarski
Kathleen Goetsch Nicholas A. Reister
Steve Jones Jessica M. Schilling
Robert B. Labe Nazneen H. Syed
Michael G. Lichterman Erin Tepastte
III. **Minutes – Marlaine C. Teahan.** The Minutes of the February 14, 2015 Council meeting were approved as submitted, by general consent.

IV. **Treasurer's Report – Marguerite Munson Lentz.** A written Treasurer's report and financial spreadsheet for January, 2015 was included in the Agenda. The Treasurer’s Report and financial report were approved as submitted, by general consent.

V. **Chairperson's Report – Amy N. Morrissey.** Ms. Morrissey welcomed those in attendance and reported on the following items:

- The State Bar of Michigan announced on March 5, 2015 the formation of the Task Force to Tackle Challenges of 21st Century Legal Practice. The announcement is at [http://www.michbar.org/news/releases/archives15/3_5_15_21CPTF.cfm](http://www.michbar.org/news/releases/archives15/3_5_15_21CPTF.cfm). State Bar of Michigan President Thomas C. Rombach has appointed distinguished legal leaders to a new 21st Century Practice Task Force to recommend how the State Bar can best serve the public and support lawyers' professional development in a rapidly changing legal marketplace. The task force will also look at the potential for modernizing Michigan's attorney regulation in response to those changes. SBM Past Presidents Bruce Courtade, of Grand Rapids, and Julie Fershtman, of Farmington Hills, will co-chair the task force. Other members of the task force include Michigan Supreme Court Justice Mary Beth Kelly, Speaker of the Michigan House of Representatives Kevin Cotter, the deans of all five Michigan law schools, former American Bar Association President Robert Hirshon, and former Judge James Redford, Governor Snyder's legal counsel.

- Each attorney should have received a survey from the SBM which is part of the Task Force to Tackle Challenges. Ms. Morrissey encouraged completion of the survey.

- In response to an email received last month from Lisa Dedden Cooper of AARP, Ms. Morrissey met with Ms. Cooper to listen to the organization's position on the UAGPPJA. Uniformity is their primary goal as 40 have adopted some form of UAGPPJA and 2 more have proposed legislation related to UAGPPJA. Ms. Morrissey has asked for data as to how many such cases have arisen in Michigan and if the uniform law is working well in other states. Ms. Morrissey anticipates we will see additional legislation on this in the future and asked Ms. Cooper to keep us informed so that we may weigh in on the issues. Jim Steward added further information on the rarity of this occurrence and Constance Brigman reported on how such changes will require significant changes to our court rules and forms.

- The Hon. Milton L. Mack, Jr. will be our new ADR Section Liaison. We are happy to have Judge Mack as part of our Council and look forward to his contributions.

- Kirkey asked for support for ICLE’s Solo and Small Firm Institute. We have a presence at the annual State Bar meeting. Institute is cosponsored with the SBM. ICLE has asked for a $2,500 support. We would be listed as a sponsoring section along with other sections, including the Business Law, Law Practice Management, and Solo and Small Firm Sections. This was discussed in detail with input by many. Ms. Morrissey asked Council to consider this over the next month in anticipation of taking a vote next month.

- Ms. Morrissey reported that the University Club apologized for the noise at our last Council meeting; the U Club very graciously reduced our bill accordingly.
Josh Ard was at the SBM's Standing Committee on Professional Ethics meeting last week. One change approved – credit unions can now offer IOLTA accounts. The Supreme Court may approve various changes to the Michigan Rules of Professional Conduct to more closely parallel Michigan's rules to the national rules. Ms. Morrissey referred these possible rule changes to the Ethics committee. Specifically, the Committee will look at MRPC 1.14 regarding a client under a disability.

George Gregory stated that there may be some significant changes to the Michigan income tax law. Mr. Gregory will give our lobbyist a heads up on how these changes might impact Council's work to update Michigan law and request that she keep us informed of any proposed legislation.

Ms. Morrissey reported on Bernstein v. Seyburn, decided February 20, 2014, unpublished, No. 313894 Oakland Circuit Court, and how that opinion may impact the statute of repose. Issue referred to amicus committee.

VI. Report of the Committee on Special Projects – Christopher A. Ballard
The Committee on Special Projects (CSP) gave a report on the following items discussed at CSP:
- Artificial Reproductive Technology Committee report, Professor Lawrence W. Waggoner reviewed issues relative to MCL 700.2114 and the possible expansion of the section in accord with the Uniform Probate Code (as revised in 2008 and 2010). It is anticipated that a complete package of materials will be presented next month.
- Insurance Committee report – CSP recommended to Council that it approve the proposed legislation for MCL 700.1513; upon a vote of Council the proposed statute was approved for submission to Becky Bechler for drafting. A public policy report will be submitted to the State Bar of Michigan. 20 were present and eligible for the vote with these results: 17 Aye, 3 Nay, 0 Abstain.

VII. Standing Committee Reports
A. Internal Governance
5. Nominating – George W. Gregory. Still accepting suggestions for nominations. The Nominating Committee consists of Mark Harder, George Gregory and Tom Sweeney. Those interested in serving as an officer or member of Probate Council should convey that interest to the Nominating Committee. In addition, individuals can be recommended to the Nominating Committee by others. The Committee has received some nominations for members and officers.

B. Education and Advocacy Services for Section Members
2. Probate Institute – James B. Steward reported that, compared to last year, we are ahead of the number of registrants for the Annual Institute. Work is ongoing for the Speakers' Dinner.

3. State Bar and Section Journals – Richard C. Mills reported that the Journal is on track to be published soon. Melisa M.W. Mysliwiec is looking for an application developer for the Section Journal.

4. Citizens Outreach – Constance L. Brigman reported on the temporary brochures. An update to the status on the Citizens Outreach Committee brochures was given. The Committee will be moving forward as follows, as approved by Council upon no objection from any member of Council:

1. Connie Brigman, as Chair of the Committee, will personally edit the brochures then submit them to SBM. Council will next see the temporary brochures after they are posted.

2. The Committee will ask the SBM to contact us in October and April each year for an update on what to do with the brochures. It was suggested that an addition be made to the biennial plan that the brochures should be reviewed regularly.

3. The Committee will clarify to the SBM that the “temporary” brochures will not be printed and sold by the SBM; and

4. The Committee will work with the SBM to have the “temporary” brochures posted on the public side of the webpage so that anyone will be able to download, edit and print them. We will clarify with the SBM that our Section has copyrighted the brochures and that will be clear on the pdfs.


6. Membership – Raj A. Malviya referred Council to his written report. Three Committee initiatives are the main focus this year, including hosting a vendor table at the May and June Annual Institutes, hosting a social gathering at the Traverse City office of Smith Haughey Rice & Roegge, and conducting meetings at Michigan law schools with 3Ls to explain benefits of Section membership and to encourage students to consider a future career in trusts and estates. Discussion was held on the Committee's funding request relative to the three initiatives presented. A concern about the timing of the social gathering at SHR&R was discussed; these issues will be resolved between Mr. Steward and Mr. Malviya so that both events can take place with the full support of Council. Mr. Malviya made a motion for $4,000 to fund the initiatives, support from Meg Lentz. Motion carries with general consent of Council; George Bearup abstained from voting.

C. Legislation and Lobbying

1. Legislation – William J. Ard. PAA report is in the Agenda, outlining the legislation we are currently watching. Mr. Gregory reminded Council that the SBM wants each Section to regularly report our public policy positions for each legislative term.

Nancy Welber brought up certain problem areas with the recent legislation relative to property tax uncapping, specifically the problem of uncapping when using a pourover will to convey property to a trust; there is currently
no exemption for such conveyance. Mr. Bearup indicated that this issue, and the issue regarding lady bird deeds, has already been presented to legislative aid for review and possible amendment.

2. Updating Michigan Law – Geoffrey R. Vernon. The Committee expects to give a full report at next month's CSP committee meeting.

3. Community Property Trusts Ad Hoc Committee – Neal Nusholtz reported that the Committee hopes to have a draft in 3 weeks or so. Mr. Nusholtz discussed the possibility of a PLR on this issue; the current debate is on whether a Michigan resident can have choice of law provision to articulate how marital property will be treated.

4. Insurance Ad Hoc Committee – Geoffrey R. Vernon. No further report other than that given at CSP.

5. Artificial Reproductive Technology Ad Hoc Committee – Nancy H. Welber. No further report other than that given at CSP.

D. Ethics and Professional Standards


3. Specialization and Certification Ad Hoc Committee – James B. Steward. No report; Ms. Morrissey indicates this topic may be taken off the Agenda.

E. Administration of Justice

1. Court Rules, Procedures and Forms – Michele C. Marquardt. J.V. Anderton reported for the committee and discussed the Supreme Court's ADM 2014-09 and its proposed modification to MCR 7.215. The Council consensus is that we would prefer having as many published opinions as possible. A motion was made by Ms. Morrissey, with support from Ms. Lentz, to oppose ADM 2014-09 to the extent it changes MCR 7.215(C), for the reasons outlined in Justice Markman's dissent. With 19 Council members present and eligible to vote, the vote was 19 Aye, 0 Nay, 0 Abstain. A public policy report will be submitted to the State Bar of Michigan.

2. Fiduciary Exception to Attorney Client Privilege Ad Hoc Committee – George F. Bearup. No report.

F. Areas of Practice


G. Liaisons


3. Elder Law and Disability Rights Section Liaison – Amy R. Tripp reported that there is a very early draft of the ABLE Act version of Michigan law that is not yet ready for review. More information may be provided if it becomes available in future months.


5. ICLE Liaison – Jeanne Murphy. Lynn Chard reported that the Probate Institute registrations are going well. Ms. Chard reminded Council members of the special session being given by attorney Lou Harrison.


10. SCAO Liaisons – Constance L. Brigman, Michele C. Marquardt, Rebecca A. Schnelz. No report.


13. Taxation Section Liaison – George W. Gregory. Mr. Gregory’s written report is attached as Attachment A.

VIII. Other Business. None.

IX. Hot Topics. None.

X. Adjournment – 12:05 p.m.
Report to the Probate & Estate Planning Section

Dated: Thursday, March 12, 2015

From: George W. Gregory, Liaison of the Taxation Section

For: The meeting of Saturday, March 14, 2015

(1) The Taxation Section had a meeting on March 12, 2015. The Taxation Section is having its annual conference. There are a number of parts of the conference that I think would be of interest to the members of the Probate & Estate Planning Section. I invite you to review the materials at the ICLE website.

(2) According to a presentation made to the Taxation Section, it is the plan of the State Bar to do away with list-serves. No date has been selected for this yet.

(3) The Young Tax Lawyers Committee of the Taxation Section decided to have social events at breweries. The next meeting is on April 2, 2015, at the Detroit Brew Company. There is information available about it on the Taxation Section website.

(4) The Inaugural Taxation Section Lifetime Achievement Award will probably take place in May, 2015. Nominations are open. You can send them to Marjorie Gell by regular or e-mail. She is the Chair of the Taxation Section and the Chair of the Committee. The deadline for nominations is April 1, 2015.

(5) There will be a “Meet the Players” conference on June 18, 2015 in Grand Rapids, Michigan. It is sponsored by the Taxation Section. The EMICPA and the Michigan Women’s Tax Association is primarily a social event (legislators will be there). More information to come.