

**MEETING OF THE COUNCIL OF THE
PROBATE & ESTATE PLANNING SECTION OF THE
STATE BAR OF MICHIGAN**

Friday, September 8, 2023

Minutes

I. Commencement (James P. Spica)

A. Call to Order and Welcome

Chairperson James P. Spica called the meeting to order at 10:42 AM noting that the meeting was being recorded and that the resulting recording is to be deleted once the minutes of the meeting have been submitted by the Secretary and accepted by the Council.

B. Zoom Roll Call

Alexander S. Mallory, Andrea Neighbors, Andrew Mayoras, Brad Douglas, Christine Savage, Daniel Borst, David Lentz, David Lucas, David Sprague, James F. Anderton, V, Jim Steward, Joe Viviano, John Mabley, John McFarland, Jonathan Beer, Kathleen Goetsch, Kenneth Silver, Lindsey DiCesare, Marguerite Munson Lentz, Nancy Welber, Neal Nusholtz, Brad D. Douglas, Robert Labe, Ryan Buck, Sandra Glazier, and Shenique Moss

C. Confirmation of In-Person Attendees

Nathan Piwowarski, Susan Chalgian, Hon. David Murkowski, Ernschie Augustin, Michael Shelton, Melisa M.W. Mysliwiec, Katie Lynwood, James P. Spica, Mark E. Kellogg, Warren H. Krueger, III, Richard C. Mills, Michael Lichterman, Patricia Davis, Angela Hentkowski, and Daniel Hilker

D. Excused Absences

Hon. Shauna Dunnings and Rebecca Wrock

II. Monthly Reports

A. Lobbyist's Report (Public Affairs Associates)

- i. In the Senate, the bills that did not get immediate effect are the pension tax proposal for seniors, the earned income tax credit, and changing the presidential primary for the Democrats from March to February 27th

- ii. Becky stated that EPIC omnibus is the priority and is sitting on the House floor. Rep. Green has asked the speaker to move the bill off the House floor. Becky sent an email follow-up to his legislator director making the same request. Senator Chang who chair the Senate Judiciary Committee has indicated that she will take the bills up in October if we can get those over to her.
 - iii. The uniform power of attorney bills are also in the Senate committee. Rep Haadsma indicated that he would send a letter requesting Senator Chang take those bills up as well. Beck will ask Senator Hope to do the same thing since she has a similar House committee.
 - iv. Jim Spica did an overview for the House Democratic Caucus's policy advisor on our power of appointment/rule against perpetuity legislation that was introduced in committee on 9/7/2023. House Judiciary Committee chair Rep Breen indicated items that she wanted to take up.
 - v. Representative Wozniak is working with Jim Spica on the unitrust bill.
 - vi. Becky has been working on the ART legislation. Rep. Steckloff indicated she wants to take care of this issue for us. She is also working on fertility-related legislation. She is working with the Senate Majority Leader hoping to attach that legislation to the bills that the governor wants to get done on reproductive rights.
- B. Minutes of Prior Council Meeting – June (Nathan Piwowski) – **Attachment 1**. Shelton/Lynwood moved to approve with amendment to item VI(C)(ii) to reflect that we offered condolence upon the death of John Bos's spouse's death.

C. Chair's Report (Mark Kellogg/Jim Spica) – **Attachment 2**. Mr. Spica shared that a donation has been made to Highfields, Inc., a Michigan social services organization in which Mark Kellogg has held several volunteer-leadership roles, in honor of Mark's exemplary service as chair of the Section. Mr. Spica drew attendees' attention to the published schedule of meetings and particularly to the fact that all meetings excepting the October meeting will be held on Fridays. The October Council meeting will be held on Saturday October 14 at the Interlochen Center for the Arts. All meetings will continue to be offered on a hybrid (in-person and Zoom) basis. Mr. Spica noted with special thanks Rep. Wozniak's handsome acknowledgement of the Council's work on the uniform power of attorney legislation in the Representative's recent testimony before the House Judiciary Committee (a copy of which is attached to these minutes). Mr. Spica indicated that there will be a roll call of the committees as part of each meeting's agenda and the addition, time permitting, of certain informal proceedings to follow the conclusion of the Council's regular business in a given meeting, including brief presentations on certain "departments" or themes such as Legal Ethics and Legal Literature, and a roundtable discussion. The first Legal Ethics topic will concern attorneys serving as trustees. The first Legal Literature topic will concern Frederic Maitland and Henry Maine. The first roundtable discussion will concern probate avoidance and the use of joint trusts.

D. Treasurer's Report (Rick Mills) – **Attachment 3**

III Committee Reports

A. Committee on Special Projects

- i. The CSP received a presentation from the Guardianship, Conservatorship & End of Life Committee regarding HBs 4909, 4910, and 4912. The CSP, by majority vote, recommended that the Council adopt a public policy position opposing HBs 4909, 4910, and 4912 as drafted, and more particularly that "We support the principle of protecting vulnerable adults, but are concerned that these proposals, as drafted, will cause certain unintended consequences." Melisa moved to adopt the suggested position. 18 voted yes, 3 were absent, and 2 were present but did not vote.

- ii. The CSP received a presentation from the Nonbanking Entity Trust Powers Ad Hoc Committee. Jim Spica and Joe Viviano offered an overview of a proposed statute to authorize the formation and operation of family trust companies and small commercial trust companies in the State of Michigan. The Ad Hoc Committee solicited feedback as to the amount and depth of future presentations regarding the proposed statute. The CSP indicated that two or three additional in-depth reviews and discussions would be helpful.
 - iii. The CSP received a presentation from the Undue Influence Ad Hoc Committee. The Ad Hoc Committee solicited feedback as to whether it should continue its work in developing a statute. The CSP, without a vote, did encourage the Ad Hoc Committee to continue its work.
- B. Amicus Curiae (Mayoras): no new activity
 - C. Annual Meeting (Kellogg): no report
 - D. Awards (Kellogg): no report
 - E. Budget (Mills): Mr. Mills reviewed the year-to-date budget, noted that impact of increased membership and decreased travel expenses, and explained the close of books by the State Bar and formulation of the next fiscal year's budget.
 - F. Bylaws (Lucas): Mr. Spica asked Mr. Lucas's committee to advise Council as to whether formal action's needed to change the convention or rule under which the chair is an ex officio member of each standing and ad hoc committee, and whether a bylaw change is necessary to similarly include the vice-chair in that manner.
 - G. Charitable and Exempt Organizations (Wrock/Mills). Mr. Mills indicated that the committee's been active in evaluating potential changes to the charitable solicitation act, nonprofit corporation act, and charitable trust supervision act (in tandem with a committee in the Business Law Section). Mr. Mills expressed gratitude that Brien Heckman has participated.
 - H. Citizens Outreach (Goetsch): the committee anticipates a significant amount of work adapting published materials following the Omnibus's adoption. Ms. Goetsch invited others to join the committee.

- I. Court Rules, Forms, and Proceedings (David): Mr. Spica noted as follows: Judge Dunnings will become our liaison to the Michigan Probate Judges Association (MPJA). Ryan Buck (Ingham County Probate Register) will become our liaison to the Probate Registers. Ms. David will become our Section's liaison to the State Court Administrative Office.
- J. Electronic Communications (Hentkowski): no report.
- K. Ethics and Unauthorized Practice of Law (Olson): no report.
- L. Guardianship, Conservatorship, and End of Life (Glazier): The committee is actively engaged in connection with the Elder Abuse Task Force's latest legislative proposals as reflected elsewhere in these minutes.
- M. Legislation Development and Drafting (Mills/Tiplady): no report. Mr. Spica noted that we
- N. Legislation Monitoring and Analysis (Shelton). Mr. Spica shared with Mr. Shelton and Mr. Olson a link to HB 4654 (Rep. Fink), which concerns electronic execution of wills. Mr. Shelton understands that Electronic Wills Ad Hoc Committee is going to be responsible for that review.
- O. Legislative Testimony (Mysliwicz): no report
- P. Membership (Hentkowski): The committee may expand its activities, including presentations for new lawyers.
- Q. Nominating (Lucas): Mr. Spica indicated that, over time, the chairmanship rules will change so that the most recent past president will chair this committee. But this will not occur until the third year from now (with the likely line of succession being: Lucas, Skidmore, Kellogg, Piwowarski). No additional report.
- R. Planning (Spica). This committee will be comprised of the current officers and first past president. This year the committee will meet regularly, often on the Monday immediately following Council meetings.

- S. Probate Institute (Piwowarski): The 2024 institute will be held on Thursday – Saturday, May 16-18, 2024, at the Grand Traverse Resort and Spa, Acme and Thursday – Friday, June 20-21, 2024, at the Suburban Collection Showplace, Novi (a new location). Mr. Piwowarski has completed the planning meeting with representatives of ICLE. Please be prepared to say “yes” when you are asked to present.
- T. Real Estate (Silver): has periodically met to discuss potential changes to the uncapping provisions of the General Property Tax Act.
- U. State Bar and Section Journals (Mysliwicz): Ms. Mysliwicz thanked the committee for its active participation in soliciting and editing articles. The Summer issue will likely be published next week.
- V. Tax (Anderton): Mr. Anderton reviewed the Tax Nugget regarding availability of deduction for intrafamily loans on a Form 706.
- W. Assisted Reproductive Technology (Welber): Ms. Welber expressed optimism regarding the prospects for the proposal’s adoption during this legislative session.
- X. Electronic Wills (): No report.
- Y. Fiduciary Exception to the Attorney-Client Privilege (Krueger): The Michigan Bankers Association desires legislation. The committee is actively monitoring the issue and will keep Council apprised. Mr. Sprague confirmed that the MBA does have a copy of our proposal.
- Z. Nonbanking Entity Trust Powers (Spica): no report beyond as reflected in these minutes.
- AA. Premarital Agreements (Savage): While the committee is well populated it would welcome additional members. Reviewing the Uniform Premarital Agreement Act. Have reached out to Family Law Section and have not received a response.
- BB. Uniform Community Property Disposition at Death Act (Spica): no report.
- CC. Undue Influence (Silver): no report beyond as reflected in these minutes. We anticipate dedicating a significant amount of CSP time in October (for topics other than the presumption).

- DD. Uniform Fiduciary Income and Principal Act (Spica): Rep. Wozniak has agreed to sponsor our unitrust legislation. While the bill will probably be introduced this year, there will not be enough session days to pass it.
- EE. Uniform Partition of Heirs Property Act (Spica): the committee asked Council to adopt a public policy position in favor of HB 4924 (page 221 of Council materials). Committee motion. 19 voted yes, 3 were absent
- FF. Uniform Power of Attorney Act (Savage/Spica). Voted through the House. In Senate Judiciary Committee.
- GG. Various Issues Involving Death and Divorce (Borst/Blume): no report.
- III. Good of the Order (none)
- IV. Adjournment of Regular Meeting at 12:23 p.m.

Respectfully Submitted,

Nathan Piwowski, Secretary