

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

Friday, November 10, 2023

Minutes

I. Commencement (James P. Spica)

A. Call to Order and Welcome

Chairperson Spica called the meeting to order at 10:30 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

Kenneth Silver, Michael Shelton, Kathleen Cieslik, Elizabeth Siefker, Rebecca Wrock, Christine Savage, David P. Lucas, Michael Lichterman, Melisa M.W. Mysliwicz, Angela Hentkowski, Hon. Milton Mack, Nancy Webler, Neal Nusholtz, Nick Reister, Patrica Davis, Rachael, Sedlacek (ICLE), Alexander S. Mallory, Sandra Glazier, Robert Labe, Rebecca Bechler (Public Affairs Associates), Mark E. Kellogg, Andrew Mayoras, David Sprague, Georgette David, James Steward, Jim Ryan, Jeff Kirkey (ICLE), and Andrea Neighbors administrative assistant

C. Confirmation of In-Person Attendees

Nathan Piwowarski, Katie Lynwood, James P. Spica, Richard C. Mills, Daniel Hilker, Susan L. Chalgian, Daniel W. Borst, Ernschie Augustin, Warren H. Krueger, III

D. Excused Absences

Hon. Shauna Dunning, James F. Anderton, V

II. Monthly Reports

A. Lobbyist's Report (Public Affairs Associates)

- i. The Uniform Power of Attorney package was completed and signed by the Governor. See 2023 Public Acts 187-189.

- ii. The EPIC Omnibus package is in the Senate Committee on Judiciary Civil Rights and Public Safety. Ms. Bechler is hopeful that it will get out of committee in late January or early February.
 - iii. The Powers of Appointment Act/USRAP technical amendment bills are on the House floor.
 - iv. The Unitrust act, HB 5110, has been introduced. It has been referred to the House Judiciary Committee.
 - v. The ART package has not yet been introduced.
 - vi. The Guardianship reform package is in the Senate. We have requested a meeting with Senator Chang.
 - vii. There is a surrogacy package, HB 5207 through 5215, that passed the House and is in the Senate, which may have some implication on the ART package.
- B. Minutes of Prior Council Meetings –
- i. September (Nathan Piwowarski) – **Attachment 1**. David Sprague motioned, and Jim Spica supported accepting the September minutes with the revisions submitted by Mr. Spica. Motion carried.
 - ii. October (Rick Mills) – **Attachment 2**. Nathan Piwowarski motioned, and Dan Borst supported accepting the October minutes. Motion carried.
- C. Chair's Report (Jim Spica) – Mr. Spica thanked Greenleaf Trust for their sponsorship of the cocktail reception that preceded the Chair's dinner in October at the Interlochen Arts Academy on the campus of the Interlochen Center for the Arts. He also thanked the chairs of committees for regularly inviting Katie Lynwood and him to committee meetings as ex-officio members. Mr. Spica also encouraged committee chairs to review the current committee lists for accuracy. There will be a holiday luncheon at the University Club following the December 15 council meeting for those who indicate a wish to attend to Katie or Jim by the close of business on Monday, November 20.

D. Chair Elect Report (Katie Lynwood) – Ms. Lynwood reported that Rebecca Wrock has been added to the Uniform Partitions of Heirs Property Committee and the Uniform Community Property Disposition at Death Act, Patricia Davis has been added to the Real Estate Committee and Amicus Committee, James Anderton has been added to the Real Estate Committee, and Angela Hentkowski is now the chair of the Real Estate committee. Ms. Hentkowski is also now the Council’s liaison to the Real Estate Section.

E. Treasurer’s Report (Christine Savage)

If you would like to donate to the Hearts and Flowers account, please send a check to Christine Savage, payable to the Lowe Law Firm, PC. Please write on the memo line of the check “Hearts and Flowers”. A suggested donation is \$35.00.

III Committee Reports

A. Committee on Special Projects

CSP participated in a lengthy discussion related to the substantive law of undue influence in Michigan. While there was some dissent to the proposed statutory language, there was a consensus that the committee should continue its work toward a statutory framework to guide judicial deliberations on the subject. No official straw-poll or vote was taken. Next month, the committee will conduct in-depth discussion on the presumption of undue influence based on confidential relationships.

B. Amicus Curiae (Mayoras): Two of the Council’s amicus submissions are subject to oral arguments in the Supreme court on December 7 and 8.

C. Annual Meeting (Spica): No report.

D. Awards (Kellogg): No report.

E. Budget (Mills): No report.

F. Bylaws (Lucas): No report.

G. Charitable and Exempt Organizations (Wrock): Rebecca Wrock reported that the next committee meeting is on December 8. The committee will be discussing the proposal for legislation on which they are working.

H. Citizens Outreach (Goetsch): No report.

- I. Court Rules, Forms, and Proceedings (Hentkowski): Angela Hentkowski is the new chair of the committee. The committee has not met yet with Ms. Hentkowski as chair.
- J. Electronic Communications (Hentkowski): No report.
- K. Ethics and Unauthorized Practice of Law (Mallory): No report.
- L. Guardianship, Conservatorship, and End of Life (Glazier): The guardianship bills were passed out of the House in addition to a new bill that would create the Office of State Guardianship.
- M. Legislation Development and Drafting (Mills/Tiplady): Rick Mills reported that the committee has met yet since he joined Rob Tiplady as co-chair.
- N. Legislation Monitoring and Analysis (Shelton). Mike Shelton reported that SB 175 was referred out by the Committee on Tax Policy favorably with an amendment that limits the penalty for failing to file for non-principal residence properties to \$4,000.00.
- O. Legislative Testimony (Mysliwicz): No report.
- P. Membership (Hentkowski): Angela Hentkowski has proposed providing webinars to the section. Dan Hilker motioned to authorize Ms. Hentkowski to upgrade the Zoom account to include webinars to the extent she deems appropriate not to exceed \$1,000.00. Nathan Piwowarski seconded the motion. The motion carried.
- Q. Nominating (Lucas): Mr. Lucas reported that the Nominating Committee will take up its work later in the year. Part of the Nominating Committee's consideration is participation in meetings and committees of the Council.
- R. Planning (Spica). Mr. Spica reminded those in attendance who may have comments on questions about the Council's proceedings that the Executive Committee is meeting regularly in each month in which there is a Council meeting on the Monday following the month's Council meeting.
- S. Probate Institute (Piwowarski): Nathan Piwowarski reported that the agenda for the 2024 Probate and Estate Planning Institute is attachment 3 of the November 2023 meeting materials, page 66.

- T. Real Estate (Hentkowski): On behalf of the committee, Ms. Hentkowski motioned that the council oppose SB 175. The secretary recorded a vote of 21 Council members in favor and 2 not voting. The Chair declared the motion passed.
- U. State Bar and Section Journals (Mysliwec): Ms. Mysliwec encouraged members to submit an article for publication in the journal.
- V. Tax (Anderton): The report is the supplemental attachment to the November meeting materials.
- W. Assisted Reproductive Technology (Welber): The Council's ART legislation did not get introduced although there is a package that did get introduced and passed the House dealing with parentage. Issues still need to be addressed regarding the confluence of these pieces of legislation. Ms. Welber has an upcoming meeting with Rep. Kelly Breen to discuss the relevant issues.
- III. Electronic Wills (Cieslik): The Committee will be meeting on November 13, 2023. If anyone would like to attend the meeting, please contact Ms. Cieslik.
- IV. Fiduciary Exception to the Attorney-Client Privilege (Krueger): No report.
- V. Nonbanking Entity Trust Powers (Spica): Mr. Viviano and Mr. Spica plan to meet with the Director of the Michigan Office of Banking to seek guidance on the next phase of the committee's work, which is to create a set of amendments to the Banking Code of 1999 to accommodate the committee's proposed Private Trust Company Act.
- VI. Premarital Agreements (Savage): The Family Law Section is planning to prepare a version of the Uniform Premarital Agreement Act. The committee is looking to possibly work with the Family Law Section. Ms. Savage will update the Council in December.
- VII. Uniform Community Property Disposition at Death Act (Spica): The committee Chair is still working on an enactment-in-Michigan draft of the uniform act that incorporates the committee's considered suggestions.
- VIII. Undue Influence (Silver): No report apart from what was discussed in the CSP meeting.

- IX. Uniform Fiduciary Income and Principal Act (Spica): The Unitrust Act, HB 5110, has been assigned to the House Judiciary committee.
- X. Uniform Partition of Heirs Property Act (Spica): The legislative proposal for the adoption of this act in Michigan will go over into the next term.
- XI. Uniform Power of Attorney Act (Savage). Christine Savage expressed gratitude to the committee members for their work. Since with the enactment of 2023 Public Acts 187-189, the committee's work is completed, Ms. Savage asked Mr. Spica to disband the committee. That request was promptly granted.
- XII. Various Issues Involving Death and Divorce (Borst/Blume): No report.
- XIII. Good of the Order
Nathan Piwowarski reported that a new sponsor has been found to reintroduce the remote notarizing and witnessing legislation in favor of which the Council has already adopted a public policy position.
- XIV. The regular meeting was adjourned at 11:51 p.m.

Respectfully Submitted,

Richard C. Mills, Secretary

The next Council meeting will be held on Friday, December 15, 2023.