

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

Saturday, October 18, 2025

Minutes

I. Commencement

A. Call to Order and Welcome (Nathan Piwowarski):

Chairperson Nathan R. Piwowarski called the meeting to order at 10:00 a.m. following the conclusion of the Committee on Special Projects meeting. Mr. Piwowarski announced that the meeting was being recorded via Zoom solely for the purpose of preparing the minutes, and that the recording would be deleted once the minutes were approved by the Council.

B. Attendance: Roll call of In-Person attendees and Zoom attendees:

Ernschie Augustin, James F. Anderton, Georgette David, Angela Hentkowski, Daniel Hilker, Warren Krueger, David Lucas, Alexander S. Mallory, Richard C. Mills, Nathan Piwowarski, Christine Savage, Michael D. Shelton, David Sprague, Joseph J. Viviano, Rebecca Wrock, Theresa Castle, Shannon DeWall, Peter Langley (Public Affairs Associates), Marguerite Munson Lentz, David Lentz, Katie Lynwood, Hon. David M. Murkowski, Matt Wiebe, James P. Spica.

C. Excused Absences:

Melisa M. W. Mysliwiec, Sandra D. Glazier, Nicholas Reister, Kathleen Cieslik, Patricia E. Davis, Daniel W. Borst, Susan L. Chalgian, Elizabeth L. Luckenbach, and Hon. Sara A. Schimke.

II. Monthly Reports:

A. Lobbyist's Report (Public Affairs Associates):

1. Mr. Langley updated Council regarding pending and anticipated legislative activity.

a) House Bills 4033 and 4034 (Trust Code Technical Amendments): Testimony by James Spica in Senate Judiciary Committee was well received; committee action is anticipated at its next meeting pending leadership approval.

b) Senate Bill 160 (Uniform Premarital Agreement Act): Awaiting further feedback from the Family Law Section; coordination with Chair Sarah Leitner's office ongoing.

- c) House Bill 4408 (Powers of Appointment Act) and House Bill 4523 (Mandatory MTC Provisions): Awaiting sponsor readiness for committee hearing.
 - d) Guardianship Package (House Bills 4727–4729): Awaiting floor action upon House return; feedback from this Section expected shortly.
 - e) House Bill 4014: Awaiting movement in Senate Finance, Insurance & Consumer Protection Committee.
- 2. Mr. Langley advised that little bipartisan activity is likely before year-end and that legislative progress may slow further entering the 2026 election cycle.
- 3. Questions were raised by Nathan Piwowarski and James Spica regarding timing of committee votes and strategy for advancing trust-related legislation. Mr. Langley explained that inter-chamber leadership disputes have delayed otherwise noncontroversial measures.
- 4. Follow-up discussion included:
 - a) Coordination with the Family Law Section on the Premarital Agreement Act;
 - b) Confirmation that the Guardianship Bill Package remains on the House floor awaiting action;
 - c) A request by Mr. Langley for written confirmation of the Section’s ongoing efforts to facilitate legislative progress, to avoid perceptions of inaction;
 - d) Mr. Piwowarski concluded the item by thanking Mr. Langley and confirming that follow-up correspondence would be provided.

B. Minutes of Prior Council Meeting (Melisa Mysliwicz):

Chris Savage presented the draft minutes from the September 12, 2025, meeting (**Attachment 1**).

Corrections offered by James Spica included:

- Replace reference to House Bill 4512 with House Bill 4523
- Reverse order of bills to read “House Bills 4408 and 4523”
- Amend references to “Powers of Attorney” to read “Powers of Appointment”

- Replace “duties and powers of trustee” with “mandatory MTC provisions”
- Correct committee reference under item “K” to the Ethics and Unauthorized Practice of Law Committee. It should say “the memorandum at attachment 4”
- Correct committee reference under item “Z” to the Non-Banking Entity Trust Powers Committee, insert on the second line, “a version of the Michigan Trust Company Act.”
- No report after EE; there is no Committee.

Corrections offered by Nathan Piwowski included:

- Replace “Honorable Schimke” with “Honorable Sarah A. Schimke.”

Nathan Piwowski moved, and David Sprague supported, accepting the September minutes, as corrected. Motion carried.

C. Chair’s Report (Nathan Piwowski):

Mr. Piwowski summarized ongoing coordination between the Section and other Bar entities, emphasizing focus areas including legislative tracking, committee engagement, and preparation for upcoming educational programs.

D. Treasurer’s Report (Angela Hentkowski):

Angela Hentkowski presented current fiscal status, referencing **Attachment 2**. Hearts and Flowers funds should be sent to Nathan Piwowski’s office for the foreseeable future. Payee should be “McCurdy Wotila and Porteous, PC”. No anomalies were reported; the Section remains financially sound.

III. Committee Reports

A. Committee on Special Projects (Daniel Hilker):

Daniel S. Hilker reported on ongoing legislative and educational initiatives, and highlighted coordination between drafting and monitoring subcommittees.

B. Amicus (Andy Mayoras): No report.

C. Annual Meeting (Nathan Piwowski): Nathan Piwowski notes next annual meeting will take place next September.

D. Awards (Katie Lynwood): No report.

E. Budget (Melisa Mysliwiec) : No report.

F. Bylaws (David Lucas): No report.

G. Charitable and Exempt Organizations (Rebecca Wrock): Next meeting is this coming Thursday the 23rd at 10 a.m., the committee is open to new members.

H. Citizens Outreach (Kathleen Goetsch): No report.

- I. Court Rules, Forms, and Proceedings (Patricia Davis and Georgette David): Georgette David reported on proposed amendments to MCR 2.107 and related rules. The Section previously opposed allowing text messaging as valid service. After testimony from Dan Hilker and Patricia Davis, revised rules were issued.

The committee discussed clarifying e-service requirements, including defining non-parties, and confirming that initiating probate filings are case-initiating documents, with interested persons treated as parties for e-service.

A memorandum will form the basis of a proposed public policy position, to be approved by electronic vote and submitted to Council before the November 11, 2025, deadline for inclusion in the State Bar Board of Commissioners' November 21 meeting.

- J. Electronic Communications (Susie Chalgian): No report.

- K. Ethics and Unauthorized Practice of Law (Alex Mallory):

Council members and discussed the Committee's prior hypothetical and Jim Spica's written response. Mr. Spica and Rick Mills emphasized that when a Michigan attorney amends a trust governed by another state's law, the key issue is competence, not unauthorized practice. The prudent course is to associate with local counsel from that state to ensure accuracy and compliance. He explained that while attorneys may study and competently apply another state's law, associating with out-of-state counsel helps avoid ethical concerns.

Nathan Piwowarski shared an example involving Wisconsin's elective community property law to illustrate unforeseen complexities when working across jurisdictions. Mr. Spica agreed, noting this underscores the value of consulting local counsel.

Alex Mallory referenced MRPC 5.5(C)(4), which allows limited legal services in another jurisdiction under certain conditions. Mr. Mills confirmed this could apply to ancillary probate filings, explaining that attorneys may advise on another state's law so long as they do not physically or professionally "practice" there beyond permitted limits.

Written report received (**Attachment 3**). Discussion deferred to next meeting due to time constraints.

- L. Guardianship, Conservatorship, and End of Life (Sandy Glazier):

Sandra D. Glazier supplemental written report (Supplemental Attachment 1) summarized the committee's review of pending guardianship legislation. Key positions recommended:

- SB 585: Oppose as drafted; support if amended to allow appraisal or broker opinion of value.

- SB 586: Oppose due to impracticality of mandatory court approval before residential moves.
- HB 4727–4728: Oppose licensure of professional guardians; instead recommend training and background check reforms.
- HB 4676–4677: Oppose current “supported decision-making” language as inconsistent with EPIC definitions of incapacity.

Discussion deferred to next meeting due to time constraints.

- M. Legislation Development and Drafting (Rob Tiplady and Rick Mills): No report.
- N. Legislation Monitoring and Analysis (Mike Shelton): No report.
- O. Legislative Testimony (Dan Hilker): No report.
- P. Membership (Ernschie Augustin): No report.
- Q. Nominating (Jim Spica): Jim Spica reported that the roster, for purposes of the agenda, should reflect that the chair is Mark Kellogg.
- R. Planning (Katie Lynwood): The Planning/Executive Committee will meet this coming Monday; no additional report.
- S. Probate Institute (Christine Savage): Christine Savage reported the planning process is going well. Ms. Savage has had a couple meetings with ICLE, with the lineup of topics almost set and national speakers likely in line. The Institute will have two national speakers this year, if everyone accepts the invitations.
- T. Real Estate (Angela Hentkowski): Angela Hentkowski reported that the committee’s comprehensive review and redrafting of the General Property Tax Act’s uncapping statute is nearly done.
- U. State Bar and Section Journals (Melisa Mysliwiec): Rebeca Wrock was identified as the new, incoming editor.
- V. Tax (J.V. Anderton):

James Anderton presented the “Tax Nugget” (**Attachment 4**), highlighting a recent case addressing claims against an estate and the deductibility of those claims. He noted the case’s unusual factual circumstances, describing it as an intersection of tax law and sensational drama.

Dan Hilker added that the IRS considers this an important case under Section 2053 regarding deductions for claims by family members against an estate. He explained that the IRS disfavors such claims, viewing them as potential deductions for familial transfers, and that the Treasury’s five-factor test used to evaluate these claims is being applied rigidly rather than as a true facts-and-

circumstances analysis. Mr. Hilker expressed his view that the regulations lack proper support and may be invalid, having been created without public comment.

- W. Assisted Reproductive Technology (Nancy Welber): No report.
- X. Electronic Wills (Kathleen Cieslik): No report.
- Y. Fiduciary Exception to the Attorney-Client Privilege (Warren Krueger): No report.
- Z. Nonbanking Entity Trust Powers (Jim Spica and Rob Tiplady): No report.
- AA. Premarital Agreements (Chris Savage): Information was submitted to Rep. Sarah Lightner. We will, again, be reaching out to the Family Law Section in hopes of a discussion regarding our proposed changes.
- BB. Uniform Community Property Disposition at Death Act (Jim Spica): No report.
- CC. Uniform Guardian, Conservatorship, and Protective Arrangements Act (Nathan Piwowarski and Kathleen Cieslik): No report.
- DD. Undue Influence (Ken Silver): Will be continuing with CSP next month, materials are the same as they have been. If anyone has comments or concerns, reach out to Ken Silvers and Sandy Glazier directly.
- EE. Trust Account (Nathan Piwowarski):
Mr. Piwowarski reported that the committee still needs a chair. He expressed his intent to offer that role to Liz Luckenbach. Chris Savage expressed that she is willing to serve if Ms. Luckenbach is not.
- FF: Uniform Fiduciary Income and Principal Act (Jim Spica): Jim Spica reported that he testified on October 15 before the Senate Civil Rights and Judiciary Committee regarding House Bill 4033, the Unitrust Act. He noted that the bill is expected to be voted out of committee soon, and if it passes the Senate, the legislative process for the measure will be complete.
- GG. Uniform Partition of Heirs Property Act: With the act adopted, this committee is being disbanded.
- HH. Various Issues Involving Death and Divorce (Dan Borst and Sean Blume): No report.

IV. Good of the Order

Members discussed coordination with the Michigan Bankers Association, updates on the Probate Institute, and acknowledgment of strong committee participation.

V. Adjournment of Regular Meeting

There being no further business, the meeting adjourned at approximately 12:30 p.m.

Roundtable discussion followed informally.

Respectfully submitted,

Melisa M.W. Mysliwiec, Secretary