

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

Friday, June 9, 2023

Agenda

- I. Call to Order and Welcome (Mark Kellogg)
 - a. Chairperson Mark E. Kellogg called the meeting to order 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.
- II. Zoom Roll Call Confirmation of Attendees (Mark Kellogg)
 - a. In person: Mark E. Kellogg, Katie Lynwood, Nathan R. Piwowarski, Richard C. Mills, James P. Spica, Jim Ryan, Christine Savage, David D. Sprague, Elizabeth Siefker, Andrew Mayoras, Angela Hentkowski, and Michael Lichterman.
 - b. Remote: Hon. Shawna Dunnings, Daniel Borst, David Lentz, Georgette David, James Steward, David Lucas, Jonathon Beer, Kathleen Cieslik, Kenneth Silver, Lindsay DiCesare, Mark Harder, Kurt Olson, Marguerite Lentz, Neal Nusholtz, Rebecca Wrock, Sandra Glazier, James F. Anderson, V, Susan L. Chalgian, Daniel S. Hilker, Rebecca Bechler, Warren Krueger, Patricia Davis, Nick Reister, Michael D. Shelton, Alex Mallory, Amanda Knaffla, Michael McClory, and Andrea Neighbors (administrative assistant).
- III. Excused Absences (Mark Kellogg)
 - a. Melisa M.W. Mysliwicz,
- IV. Lobbyist's Report (Public Affairs Associates)
 - a. Jim Ryan offered the following report:
 - i. EPIC bills moved out of committee. HBs 4416, 4417, 4418, and 4419 passed unanimously. The Secretary of State added amendments to HBs 4417 and 4419. Representative Filler is working on the council's amendments.
 - ii. Rep. Jim Haadsma has submitted language to the legislative service bureau regarding the uniform statute rule against perpetuities.

VI. Monthly Reports:

- A. Minutes of Prior Council Meeting – April (Nathan Piwowski) – **Attachment 1**. After a motion by Nathan Piwowski, approved unanimously by voice vote.
- B. Chair's Report (Mark Kellogg). Mr. Kellogg updated the council regarding the section's legislative efforts and a successful annual institute.
 - i. The lobbyists are working to get legislation introduced. Chairperson Kellogg testified to the Judiciary committee regarding House Bills 4416-4419. These bills were voted out of the House Judiciary Committee.
- C. Treasurer's Report (Rick Mills) – Budget approval – **Attachment 2**
 - i. Rick Mills, moved for approval of the financial report. Approved by voice vote.
 - ii. Ex-officio John Bos's spouse passed away; Rick Mills made a donation on behalf of the council to the Capitol Area Humane Society. Mary Scott, wife of ex-officio John A. Scott passed away. Rick Mills made a donation on behalf of the council to the Munson Medical Center in memory of Mary Scott.
 - iii. Nathan Piwowski moved to authorize a payment of \$26,872.50 to Trevor Weston and his firm for legal services rendered in the *Shaaf v. Forbes* case in FY 2021-2022 and authorize the State Bar to release that payment to Mr. Weston's firm. Second by Jim Spica. Approved by voice vote.
- D. Committee on Special Projects (Rick Mills)
 - i. There was a lengthy discussion regarding undue influence and the committee's proposal. No vote was taken.
 - ii. Jim Spica gave a presentation on behalf of the Nonbanking Entity Trust Powers Committee.
- E. Tax Committee Tax Nugget (JV Anderton). JV Anderton shared the tax nugget as a written report.

VIII. Amicus Committee (Angela Hentkowski)

- a. Angela Hentkowski, on behalf of the committee led a discussion regarding the Amicus Brief invitation from the Supreme Court in re guardianship of Anna-Marie Margaret Bazakis. Nathan Piwowarski moved, and was seconded by Rick Mills, that the Section , to retain amicus counsel in Bazakis (billed hourly, standard cap) and adopt the public policy position that (a) Michigan's probate courts are preempted by federal law from requiring that a representative payee create joint accounts to receive funds paid under the Social Security Act, (b) to the extent the Bazakis order requires placement of rep payee funds in a joint account, the trial court lacked jurisdiction to do so, and (c) probate courts nonetheless possess the power to require that a guardian who is also serving as rep payee render an account or disclose other documentation in reference to their management of the protected person's funds under the rep payee program, and that further the probate court may engage in other remedies as to the guardianship for mismanagement of a protected person's rep payee funds. The Secretary recorded a vote of 16 in favor, 0 opposed, 1 not voting, and 6 abstaining; the Chair declared the motion carried.
- b. Nathan Piwowarski moved, and was seconded by Angela Hentkowski, to retain amicus counsel on Malloy (billed hourly, standard cap) and adopt the public policy position that (a) the distinction between powers and duties in the Malloy court of appeals opinion is correct and (b) that a professional guardian is not required to execute a power of attorney to its employees under MCL 700.5103 when they discharge the guardian's duties because they are able to do that pursuant to section 5106 sub 6. The Secretary recorded a vote of 16 in favor, 2 opposed, 2 not voting, and 3 abstaining; the Chair declared the motion carried.

- X. Uniform Power of Attorney Ad Hoc Committee – Jim Spica
 - a. Jim Spica moved, and was seconded by Chris Savage, to adopt a public policy position to support 2023 HBs 4644-46. The Secretary recorded a vote of 13 in favor, 4 opposed, 3 not voting, and 2 abstaining; the Chair declared the motion carried.
- XI. Written Reports
 - a. Nominating Committee
- XII. Other Business (none)
- XIII. Adjournment
 - a. Adjourned at 12:05.

Respectfully Submitted,

Nathan Piwowarski, Secretary