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 5 officers and 15 members of the Council were present, representing a quorum.

A. **The following 5 officers of the Council were in attendance:**

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

B. **The following 15 members of the Council were in attendance:**

   W. Josh Ard  
   Christopher A. Ballard  
   George F. Bearup  
   Rhonda M. Clark-Kreuer  
   Hon. Michael L. Jaconette  
   David P. Lucas  
   Raj A. Malviya  
   Michele C. Marquardt  
   Richard C. Mills  
   Lorraine F. New  
   Patricia M. Ouellette  
   David L.J.M. Skidmore  
   James P. Spica  
   Geoffrey R. Vernon  
   Nancy H. Welber

C. **The following 3 members were absent with excuse:**

   Susan M. Allan  
   Constance L. Brigman  
   Mark E. Kellogg

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

   John E. Bos  
   Robert D. Brower, Jr.  
   George W. Gregory

E. **The following guests were in attendance:**

   John Roy Castillo  
   Lisa M. Damphousse  
   Kathleen Goetsch  
   Raymond Harris  
   J. David Kerr  
   Buzz S. Leach  
   Sueann Mitchell  
   Jeanne Murphy  
   Neal Nusholtz  
   Robert O'Reilly  
   Julie Paquette  
   Nicholas A. Reister
III. Minutes – Marlaine C. Teahan. The Minutes of the March 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 and February, 2015 were included in the Agenda. A new line item of $4,000 was added to the budget for Membership Development Committee – this looks as if we are over budget but we are not since it was newly added. 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:

- Two public policy reports from positions taken at our last meeting have been reported to the State Bar. They are ADM File No. 2014-09 (court rule change to MCR 7.215 related to unpublished opinions), and a public policy position on a proposed section, MCL 700.1513, related to exculpation of trustees of life insurance trusts from liability related to the administration of life insurance policies held in the trust.
- Michele Marquardt sent a thank you note regarding plant received.
- Discussed request from ICLE for a $2500 sponsorship of the Solo and Small Firm Institute. Ms. Morrissey went over demographic information and benefits of sponsorship as provided by Jeff Kirkey at ICLE. Pros and cons were discussed. Many issues raised. Motion by Jim Stewart with support from Meg Lentz, modified to request that ICLE allocate $1000 of the $2500 sponsorship to scholarships for Section members. This motion passed with unanimous support. Attachment A, Memorandum from Ms. Morrissey, discussing sponsorship and attaching email from Mr. Kirkey.
- ICLE website agreement from 2011 needs updating. Discussed background and benefit to the Section to continue with an agreement for the ICLE website. More discussion will be had by the officers on the specific language. The contract must be reviewed and approved by SBM general counsel, Cliff Flood. Ms. Morrissey asked council members for input on this and she may be circulating the agreement before June for additional Council input.
- Council’s letter to the Court of Appeals in the Cliffman case was returned from the Court. Discussed need for motion to file an amicus brief and brief. Suggestion made to look at superintending control. Amicus Committee to look at our future procedures.
- Referral to the Committee on Court Rules, Forms and Procedures to consider the court rule related to who is entitled to make a motion for reconsideration.
- The Hon. Milton L. Mack, Jr. is welcomed as our new ADR Section Liaison; we look forward to his contributions.

VI. Report of the Committee on Special Projects – Christopher A. Ballard
No action items were reported on and no votes were requested by the Committee on Special Projects (CSP). A report was given regarding 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).
A complete package of materials is in the Agenda. We began a review of the package and this will continue for several months.

- A vote was taken at CSP to approve the draft of the new version for MCL 557.151; the latest draft was approved. A motion to approve by Council was deferred.
- Updating Michigan Law Committee
  - Proposed tenancy by the entireties statutes – next month

VII. Standing Committee Reports

A. Internal Governance

5. Nominating – George W. Gregory. No report

B. Education and Advocacy Services for Section Members

1. Amicus Curiae – David L.J.M. Skidmore. No further report than the discussion on this issue during Chair Morrissey’s report.
2. Probate Institute – James B. Steward reported that, compared to last year, we are still ahead of the number of registrants for the Annual Institute. Work is ongoing for the Speakers’ Dinner. Discussed bus use and the various other activities at the Institute.
3. State Bar and Section Journals – Richard C. Mills reported that Spring Journal was recently published.
4. Citizens Outreach – Constance L. Brigman. Ms. Morrissey reported in Ms. Brigman’s absence. Discussed possibility of looking at third party vendors for brochures, focusing on options and cost. Discussed print versions – for now we are dealing with website but will consider print versions. Ms. New asked if the public would use the website. Ms. Welber said the SBM wants us to have this online. Discussion that indigent and older clients still want paper brochures and could not access or know how to use the digital versions. It is important to keep in mind that the mission was from the pamphlet committee.
6. Membership – Raj A. Malviya. Mr. Malviya reported on visits to law schools. The packets to be distributed at law schools were passed around; these can also be used at solo and small firm institute and at the vendor table at the May and June Annual Institutes. Discussed the social gathering at the Traverse City office of Smith Haughey Rice & Roegge, May 8, from 4-6 p.m. Details will be worked out for buses. Discussed how the social event will be promoted using emails, posts on
the listserv, SBM and ICLE discussion boards.

C. **Legislation and Lobbying**

1. **Legislation – William J. Ard.** The PAA report of bills we are watching is in the Agenda materials. Mr. Ard also reported on a bill involving a statute of repose for engineers etc. (SB 149). Ms. Lentz discussed digital assets bill which is moving forward; however, Rep. Forlini is trying to get a small workgroup together to tweak the bill. Discussed industry's response around the country. Council still favors the Uniform Law Commission's, standalone bill approach.

2. **Updating Michigan Law – Geoffrey R. Vernon.** Work continues on many issues including domestic asset protection trusts, digital assets, trustee exoneration in certain situations relative to life insurance trusts, and proposed tenancy by the entireties statutes. Mr. Vernon requested that Section members email him ideas for corrections, changes, or updates to EPIC and other probate and estate planning topics for consideration by the Updating Michigan Law committee.

3. **Community Property Trusts Ad Hoc Committee – Neal Nusholtz** reported that the draft was circulated in the materials and we hope to review it next month.


5. **Artificial Reproductive Technology Ad Hoc Committee – Nancy H. Welber.** Summarized what was discussed at CSP.

D. **Ethics and Professional Standards**

1. **Ethics – David P. Lucas.** No report.

2. **Unauthorized Practice of Law & Multidisciplinary Practice – Patricia M. Ouellette.** No report.

3. **Specialization and Certification Ad Hoc Committee – James B. Steward.** Spoke with Lynn Chard and Janet Welch on Specialization and one hurdle is that Michigan does not have mandatory CLE and specialization program would require mandatory CLE. It is difficult to push a specialization program along by ourselves. New issue is that the SBM Task Force identified the concept of specialization last fall. We will watch and see where the Task Force goes on this issue before we do much more on our level. Nancy Welber, while at a recent ACTEC meeting, talked to the person in charge of specialization in Florida, who is willing to discuss these issues with Mr. Steward. Ms. Welber learned that the cost in Florida is astronomical, especially the appeals process when someone does not qualify or fails the test. We discussed the need to review potential programs of other groups approval or use of other groups to specialize with a need to review the program; this issue was referred to the Ethics Committee. David Lucas and Rick Mills will work on this issue with Mr. Steward.

E. **Administration of Justice**

1. **Court Rules, Procedures and Forms – Michele C. Marquardt.** No report.
2. Fiduciary Exception to Attorney Client Privilege Ad Hoc Committee – George F. Bearup. No report.

F. Areas of Practice

1. Real Estate – George F. Bearup. PRE statute was discussed. This is a work in progress.

2. Transfer Tax Committee – Lorraine F. New. Discussion of IRS report that lists common taxpayer errors. 


4. Guardianship, Conservatorship, and End of Life Committee – Rhonda M. Clark-Kreuer. Judge Mack – reported that Sen. Jones and AARP had a meeting regarding an amendment to EPIC relative to guardianships in two states. This issue appears in probate court infrequently. Sen. Jones will introduce a bill to allow probate court to appoint a guardian here. Judge Mack provided additional insight. John Roy Castillo supplied information on the details of a probate case in Michigan that played a part in the proposed legislation. We will work with Becky Bechler on this bill. LSB has finished the draft of the bill and it will be introduced in the next few weeks (Later we learned this is SB 270, introduced on April 15, 2015 by Sen. Jones).

G. Liaisons

1. Alternative Dispute Resolution Section Liaison – Hon. Milton L. Mack, Jr. is a proponent of alternative dispute resolution (ADR) as it provides a mechanism allowing big chunks of time to be set aside to handle the difficult cases. Wayne County Probate Court has terminated the case evaluation system. See Attachment B, Mediation in Probate Cases, Susan J. Butterwick, J.D. and Susan D. Hartman, J.D.


3. Elder Law and Disability Rights Section Liaison – Amy R. Tripp.


5. ICLE Liaison – Jeanne Murphy. Discussed renewal for the website for EPIC Q&A. Has usage reports if people want that.


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


VIII. Other Business. We had a discussion on the Section's listserv and the other discussion boards available at the State Bar of Michigan Probate Section page and at ICLE's probate forum. It is not likely we will be making any move to consolidate these three resources in the near term; however, it was noted that having so many locations to post discussions may have the negative impact of diluting the power of these resources.

IX. Hot Topics. Recent estate recovery cases before the Court of Appeals were discussed.

X. Adjournment – 12:05 adjourned
ATTACHMENT A
To: P&EP Council  
From: A. Morrissey, Chair  
Date: April 10, 2015  
Subject: Support of Solo and Small Firm Institute

1. At the March Section meeting, I presented the joint request of ICLE and the SBM for our Section’s financial support of the Solo and Small Firm Institute in October 2015.

2. Attached is Jeff Kirkey’s March 10 email to me, which I summarized at the March meeting. Our Section has been asked to contribute $2,500 in support of this Institute.

3. In response to additional questions that Council members raised in March, Jeff Kirkey and the SBM report:
   a. 58 of 194 at the 2014 Solo-Small Firm Institute were Probate Section members. That’s almost 30%. About 1/3 of our Section members attending this Institute in 2014 were women; 2/3 men.
   b. In terms of years in practice for our Section members, 15 had P numbers over 70000; 22 were P numbers under 40000, and the rest P numbers between 40000 and 70000, so yes, attendance included a significant amount of newer attorneys but also many experienced ones.
   c. 61 Probate & EP Section members attended in 2013.
   d. There isn’t a co-sponsoring section discount for this program. The only discount is “Early Bird,” but it’s a $50 savings so we should all encourage section members to sign up early. The price of the institute is cheaper than a usual ICLE event - $195 gets one 2 full days, three breakout tracks, national speakers, etc.
   e. SBM says that we can set aside an amount of support dedicated to scholarships for the section members similar to how the Business Law Section has done so in the past. The Business Law Section has offered $1000 of their $2500 sponsorship toward member registrations. We can do same if we choose.
   f. There will also be an opportunity for someone to speak on behalf of our Section.
Hi Amy,

You may recall that we talked recently about the Probate Section potentially serving as a sponsor of the Solo-Small Firm Institute.

On behalf of the State Bar and ICLE, please consider this my formal request to sponsor the 2015 SSFI. The State Bar requests $2,500 to serve as a sponsor. The dates are Thursday & Friday, October 8 & 9, 2015 at the Suburban Showplace in Novi. We’re all looking forward to trying out this new location. The benefits to the Section include:

- Listed as one of the sponsoring sections along with the Solo-Small Firm Section, LPM Section and Business Law Section
- Recognition of the Section from ICLE course planner at start
- Exhibitor table available to hand out information and sign up new members
- Large sign thanking all the Institute sponsors
- Prominent placement on cover of brochure and on web site
- 4-5 e-blasts to all SBM members with the Section prominently featured
- Featured on full page ad in Bar Journal
- Featured in E-Journal ads for the Institute
- Input into the topics and speakers (2016 and beyond)

The 2014 program got excellent reviews. Attendees really loved our new national speaker, Cordell Parvin, as well as Randy Dean and Barron’s Henley’s technology topics. We had more than 190 in attendance. The 2015 schedule is almost complete. We’re bringing in new national speakers Deborah Epstein Henry (www.flextimelawyers.com) and Steve Hughes (www.HitYourStride.com) along with fan-favorite Barron Henley and a terrific cast of Michigan experts.

Please let me know if there is any additional info I can provide right now. I understand if the section is not able to vote on sponsorship until your next meeting, but I’m certain the State Bar would like to know as soon as possible.

Thanks very much for considering this opportunity, Amy. Also, I will soon send you a nomination for Judge Harter for the George Cooney Society for consideration at the council meeting.

Jeff
Attachment B
MEDIATION IN PROBATE CASES

Susan J. Butterwick, J.D. and Susan D. Hartman, J.D.

The following summaries are based on mediations of probate cases. Judge Milton Mack, Chief Judge of Wayne County Probate Court, reviewed the summaries and submitted likely court decisions based on the facts of each case. The actual mediated agreements, following the judge’s opinions below, illustrate the differences between court decisions and mediated settlements.

Estate division case. Two daughters (step-sisters) of deceased father disagreed over personal property and the house. Angry accusations surfaced over who had removed several valuable personal items.

Court Decision: “The question is who should be the Personal Representative of the estate. In this case, a Public Administrator would be appointed who would then propose how to distribute the property. The Public Administrator’s plan would probably be approved by the court.”

Mediated Agreement:

- All “missing” and contested items were located, accounted for and distributed cooperatively.
- Both families agreed informally on ways to repair their strained relationships.

Note: Relieved attorneys noted they had not been able to settle this contentious case for months.

Guardianship case. A woman in advanced stages of dementia was cared for at home by her two daughters, one of whom was co-guardian with their brother. The sisters accused their two brothers of removing mementos and furniture from the home, and denied both brothers access to the home. The sisters removed all photos of their brothers from their mother’s room. The paid care workers, on the sisters’ instruction, gave no health information to the brothers. The sisters characterized the co-guardian brother’s calls for information and issuing care orders as interference.

The sister co-guardian petitioned to have her brother removed as co-guardian. Both sisters were unhappy that they had to “do all the work,” while their brothers maintained they could not help while being denied access.

Court Decision: “The legal question would be whether to remove the brother as co-guardian. An additional question would be whether to remove the sister for failing to carry out her duties. The request to remove the brother would be denied and the sister would instead be removed.”

Mediated Agreement:
• Sister and brother remain co-guardians.
• Brothers’ photos to be returned to the mother’s room.
• Co-guardian brother to make medical decisions.
• All siblings to exchange information for mother’s care by logging information in her care notebook.
• Brothers to bring groceries, clothing, and medications to the home.
• Bills to be submitted to the brother for reimbursement from respondent’s account.
• If further disputes arise, they will return to mediation before going to court.

Note: After the mediation, the siblings told old family stories, reminisced, and hugged one another.

Conservatorship case. An 81-year old single nursing home resident with cancer and early dementia was extremely proud that she had worked in a factory since age 20 and supported herself. Her brother petitioned the court for conservatorship so that he could pay her nursing home and other bills, which she had not been paying. Respondent opposed the court petition and the idea of anyone handling her finances.

Court Decision: “The legal question is whether she needs a conservator. The brother would probably be appointed in this situation.”

Mediated Agreement:

• Respondent agreed to a conservatorship because she was reassured she would have some autonomy. Respondent received the $60 left over each month after payment of bills to use as she pleased.

Note: While the mediated agreement appears similar to the court decision in this case, the effect was different. During the mediation, respondent admitted that she couldn’t keep track of things as well as she used to and didn’t really object to her brother handling her bills. Her primary interest was in retaining some spending money (“to jingle in my pockets”) and feeling that she still could make some choices. Had the court imposed the same conservatorship, she would have continued to resist her brother’s authority and might never have discussed her interest in maintaining some autonomy while losing control over other aspects of her life.

With its focus on collaborative process, mediation is often a good fit for probate cases. As in these examples, mediation is particularly useful when the claims are not simply legal disputes, but involve ongoing relationships. The process in a contested probate hearing can polarize and damage relationships further; a third-party decision based solely on the legal merits of the case usually creates unhappiness and anger on at least one side.
Mediatable issues can arise in almost any kind of case in the probate jurisdiction: decedent’s estates, disputes arising from trusts, guardianships over minors or adults, conservatorships, other protective proceedings and Mental Health Code cases. In guardianship and mental health cases, although the question of capacity remains an issue for court decision, there are often a multitude of other issues, regarding care and planning and assignment of responsibilities, that are well suited to collaborative decision making.

As an attorney in probate-related mediation, you have an opportunity to counsel your clients on using the process effectively. You can educate your clients on their legal options and the legal effects of actions, letting them know the risks as well as benefits of a court hearing, and then allow them to be the final decision-maker once you have given them the necessary information. Guardians ad litem, or sometimes the vulnerable person’s attorney, can help by focusing on the interests of the vulnerable person, by moving the focus onto meeting needs of the parties.

Attorneys who are able to prepare themselves and their clients well, to understand what their clients believe is truly important about a case, and to recognize that personal relationships as well as legal issues may have an impact on the agreement, will find that clients benefit from mediated agreements. Even when agreements are not reached, parties will have gained insight about their own goals and expectations about the case, and often will have set the stage for reaching a settlement through further negotiation.

This article appeared in Michigan Lawyer’s Weekly in February 2010.