MEETING OF THE COUNCIL OF THE
PROBATE AND ESTATE PLANNING SECTION
OF
THE STATE BAR OF MICHIGAN

April 16, 2016
Lansing, Michigan

Minutes

I. Call to Order

The Chairperson Elect of the Section, James B. Steward, called the meeting to order at 10:34 a.m.

II. Attendance

A. The following officers and members of Council were in attendance:

James B. Steward
Marlaine C. Teahan
Marguerite Munson Lentz
Christopher A. Ballard
Susan M. Allan
George F. Bearup
Constance L. Brigman
Christopher J. Cakwell
Rhonda M. Clark-Kreuer
Kathleen M. Goetsch
Hon. Michael L. Jaconette
Michael G. Lichterman
David P. Lucas
Katie Lynwood
Raj A. Malviya
Michele C. Marquardt
Richard C. Mills
Lorraine F. New
David L.J.M. Skidmore
Geoffrey R. Vernon
Nancy H. Welber

A total of 21 council members and officers were present, representing a quorum.

B. The following officers and members of Council were absent with excuse:

Shaheen I. Imami
Mark E. Kellogg

C. The following officers and members of Council were absent without excuse:
D. **The following ex-officio members of the Council were in attendance:**

Robert D. Brower, Jr.  
George W. Gregory  
Michael J. McClory

E. **Others in attendance:**

Becky Bechler  
Jeanne Murphy  
Rebecca Schnelz  
Daniel S. Hilker  
Sueann T. Mitchell  
James Spica  
J. David Kerr  
Rose Scheid  
Susan Chalgian  
Carol Sewell  
Bradley Martin  
Robert O’Reilly  
Ryan Bourjaily  
Mike Shelten  
Justine M. Sylvester  
Raymond Harris  
Paul Vaidya  
Jessica Schilling  
Scott Robbins  
Nazneen Syed  
Neal Nuscholtz  
Robert M. Taylor  
John Roy Castillo  
Georgette E. David  
Catherine Hoort  
Kurt A. Olson

III. **Minutes of the March 12, 2016 Meeting of the Council**

The minutes of the March 12, 2016 Meeting of the Council were attached to the Agenda for this meeting posted on the Section’s web page prior to the meeting. Michele Marquardt moved that the minutes be approved. The motion was seconded. The motion was approved on a voice-vote with no nays and no abstentions.

IV. **Treasurer’s Report – Christopher Ballard**

The Treasurer’s report was attached to the Agenda for this meeting.
Mr. Ballard re-opened the discussion about support for the 2016-2017 Solo and Small Firm Institute. At last month’s meeting, it was assumed that the line item in the 2015-2016 budget was for the November 2016 Solo and Small Firm Institute, but that line item was for the November 2015 institute. Since the fiscal year ends in September, support for the November 2016 Solo and Small Firm Institute needs to be included in the 2016-2017 budget, if Probate Council approves the authorization.

Mr. Ballard moved that the Council approve $2500 to support for the November 2016 Solo and Small Firm Institute, with $1500 being for general support and $1000 being for scholarships for Probate and Estate Planning Section members. Ms. Lentz seconded the motion. The motion was approved on a voice-vote with no nays and no abstentions.

Ms. Teahan reported that Jeff Kirkey has asked the Council for support for a November 2016 Experts in Estate Planning seminar. Ms. Teahan moved that the Council approve $4000 to support the ICLE Experts in Estate Planning seminar to be given on November 17, 2016 in Plymouth by Ms. Kim Cannon. The topic will be estate planning for divorce and blended families, and may also cover prenuptial agreements. Section members will receive a $30 discount from the seminar price (from $195 to $165) and the seminar will be available by video for three years after the seminar date. The motion was supported. The motion was approved on a voice-vote with no nays and no abstentions.

V.

Chairperson’s Report – Shaheen I. Imami

Mr. Steward gave the Chair’s report in Mr. Imami’s absence. Mr. Steward directed Council members to bullet points in the Agenda and Attachment 3 to the Agenda. In particular, Mr. Steward directed attention to Michigan Supreme Court Order ADM File No. 2014-09 which modifies the rules for publication of opinions and for citing an unpublished opinion.

VI.

Report of the Committee on Special Projects – David P. Lucas

Mr. Lucas reported that CSP had substantial discussion on various proposed changes (including artificial reproduction technology) to bring EPIC in conformity with changes that have been made to the Uniform Probate Code. Ms. Welber will report back to CSP at a later meeting.

Mr. Lucas reported that Citizen’s Outreach Committee reported on a new brochure on estate administration. The CSP committee recommended that the Council adopt the brochure. Mr. Lucas so moved. The motion was approved on a voice-vote with no nays and no abstentions.

VII.

Standing Committee Reports

A. Internal Governance

3. Awards – Amy N. Morrissey—No report.
5. Nominating – Mark K. Harder

Mr. Steward reported that Mark Harder sent an email blast to the Section requesting nominations.

6. Annual Meeting – James B. Steward

Mr. Steward reminded everyone that the date of the annual meeting is listed on the schedule of meetings sent with the Agenda. It will be held at the University Club.

B. Legislation and Lobbying

1. Legislative Analysis and Monitoring Committee – Michele C. Marquardt

Ms. Marquardt reported that her committee is looking at SB 873 (crime victims restitution) to determine whether the language should be revised to align with EPIC.

2. Legislation Development & Drafting Committee – Geoffrey R. Vernon

Mr. Vernon reported that volunteers have been assigned to draft various aspects of proposed changes to EPIC/MTC.

The Fiduciary Access to Digital Assets Act has been enacted.

The proposed tenancy by entireties legislation as passed by the Council was shared with Real Estate Section, who are working on various amendments to deal with gender neutral language (in light of same-sex marriage). The Real Estate Section sent our proposal along with their proposals to the Legislative Service Bureau, which revised the language (but did not make any substantive changes). The proposals are included with the Agenda as Attachment 4. Mr. Vernon will discuss with the Real Estate Section about questions they have about our proposal, language suggestions Mr. Vernon’s committee has with their proposals, and including other gender neutral language changes that Mr. Vernon’s committee has drafted.

Mr. Vernon suggested it might be helpful to have a liaison with Real Estate Section.

Mr. Vernon reported that the Elder Law Section has created a legislation committee. Howard Collens, who is on Mr. Vernon’s committee, is also on the Elder Law Section’s new committee.

3. Insurance Legislation Ad Hoc Committee – Geoffrey R. Vernon

Mr. Vernon reported that the ILIT trustee exoneration bill came back from LSB with a change requested by bankers. The phrase “otherwise stated in the terms of trust” was changed to “otherwise required by the trust”—this change was not considered to be substantive. Mr. Vernon’s committee recommends that we ask Senator Jones to be the sponsor of the ILIT exoneration bill.

Ms. Bechler reported on two other bills: probate appeals and DAPT. Sen. Kesto introduced in the House identical bills as were introduced in senate by Sen. Schuitmaker. These are scheduled for an April 26 hearing of the House Judiciary committee.
4. Artificial Reproductive Technology Ad Hoc Committee – Nancy H. Welber

Ms. Welber reported that the committee has a few more questions to research. In addition, she intends to contact the Family Law Section and the Michigan Probate Judges Association for their comments on the proposed changes to revise EPIC to confirm with the current version of the UPC. Ms. Welber and her committee will be following up on three areas in particular: (i) the definition of “sign” (is that the most current ULC definition and how does it compare to the definition in the UCC); (ii) the provision for permitting a will to be notarized rather than have two witnesses and how does the proposed language compare to similar language in the durable power of attorney statute or the funeral representative designation statute; and (iii) the proposed intestate section dealing with children in gestation (700.2104) and should there be a comparable provision for interpretation of wills.

Other Council members raised a concern about leaving estates open as long as contemplated by the proposed amendments.

Ms. Welber will recommend to the Chair of the Council to change the name of the committee to the Ad Hoc Uniform Probate Code Update Committee.

C. Education and Advocacy Services for Section Members


2. Probate Institute – Marlaine C. Teahan

Ms. Teahan reported that the add-on seminar has 46 registrants. The total registrants for May and June (combined) is 418 (286 for Acme and 132 for Plymouth). That is 23 ahead of last year.

3. State Bar and Section Journals – Richard C. Mills

Mr. Mills reported that the next issue is on track. Mr. Mills encouraged Section members to submit more articles.

4. Citizens Outreach – Constance L. Brigman

Ms. Brigman reported on the options for printing the brochures (using the State Bar to print on demand and sell or the Section printing paper copies and selling the brochures or both). If the Section uses the State Bar to print on demand and sell, the cost is $0.60 per copy. If the Section prints at least 5000 copies of each brochure and Council members sell the brochures, the cost is $0.30 per copy.

Ms. Brigman moved for the authority to spend $6500 to order 5000 copies of each of 4 brochures and send the contract to Mr. Cliff Flood at the State Bar for approval. Ms. Brigman will not order any brochures unless and until she and her committee have worked out the details and mechanics about how to sell (for example, by pre-order to pick up at the annual institute), how to collect payment (for example, using a mechanism for credit card payment), and discuss with the State Bar how to collect and pay the sales tax. Since this expenditure is not in the 2015-2016
budget, the expenditure will be paid from the Section’s General Fund balance. The motion was seconded by Ms. Lentz. The motion was passed by voice vote with one opposed and no abstentions.

Ms. Brigman’s committee will investigate re whether FP Horak (the printer that used to publish the Probate Journal) will print on demand and at what cost before requesting authorization from Council to have the State Bar print the brochures on demand.

5. Electronic Communications – Michael G. Lichterman

Mr. Lichterman raised an issue about the list serve. The email addresses for recipients of the list serve do not match the official list of email addresses for Section members. Some Section members may be using a different email for the list serve. Others may not be current Section members. At Mr. Steward’s request, Mr. Lichterman will prepare a written report for the June meeting.

6. Membership – Raj A. Malviya

Mr. Malviya reported that members of his committee will staff a booth at the Young Lawyers Summit on June 3 and 4, 2016 in Novi.

The Membership Committee will do the same thing at the Annual Probate Institute. The Membership Committee will also host a Friday night social event at the Acme institute. Because of construction, the venue is being moved to the Grand Traverse hotel. Mr. Malviya will send an electronic invite and also hand out invitation cards at the Institute.

D. Ethics and Professional Standards


E. Administration of Justice


F. Areas of Practice

1. Real Estate – Mark E. Kellogg—No report.

2. Transfer Tax Committee – Lorraine F. New

Ms. New reported on Estate of Victoria Dieringer, Deceased, 148 TC No. 8 (March 30, 2016). The estate paid no estate tax, claiming a large deduction for stock bequeathed to the decedent’s foundation. However, the actual redemption price of the foundation’s stock, because of post-death events, was significantly less. The IRS ruled that the actual redemption price controlled, which reduced the deduction and cause the estate to have estate tax, penalty, and interest.


VIII. Other Reports

G. Liaisons


3. Elder Law and Disability Rights Section Liaison – Amy Rombyer Tripp—No report.

4. Family Law Section Liaison – Patricia M. Ouellette—No report.

5. ICLE Liaison – Jeanne Murphy—No report.


Judge Jaconette reported that if Council members have any issues for the MPJA, they should email him at jaconette@calcounctymimi.gov or let him know at a Council meeting.

9. Probate Registers Liaison – Rebecca A. Schnelz

Ms. Schnelz reported that the probate registers are preparing for the summer conference.

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


13. Taxation Section Liaison – George W. Gregory

Mr. Gregory’s written report is attached.

IX. Other Business

X. Hot Topics

XI. Adjournment

The meeting was adjourned by Chairperson Elect James B. Steward at 11:53.
I did not attend the February 18, 2016 meeting of the Taxation Section, but I have reviewed the agenda, handouts and minutes.

The Taxation Section has Committees. The Committees are substantive areas and committee meetings emphasize educational presentations and issue discussions. Committees also select articles to be included in the *Michigan Tax Lawyer*. The Taxation struggles with keeping the Committee rosters up to date and explain to new members the advantages of attending Committee meetings. It is going to try Survey Monkey.

The Taxation Section is also reaching out to law schools.

The Taxation Section has 1315 members.