I. Call to Order – Nancy Little called the meeting to order at 10:00 am on December 13, 2008 at the State Bar Building, 306 Townsend Street, Lansing, Michigan.

II. Excused Absences – Douglas G. Chalgian
Hon. Kathryn A. George
J. David Kerr
Hon. David M. Murkowski
Harold G. Schuitmaker
Rebecca A. Schnelz
James B. Steward
Robert M. Taylor
Robert P. Tiplady II

Others Absent- Robin D. Ferriby

Officers and Counsel Members Present -
Nancy L. Little, Chairperson
George W. Gregory, Secretary
Mark K. Harder, Treasurer

Josh Ard
Ellen Sugrue Hyman
Marilyn A. Lankfer
Patricia M. Ouellette

Susan M. Allan
Amy N. Morrissey
Thomas F. Sweeney
Marlaine C. Teahan

Shaheen I. Imami
Richard J. Siriani

Ex-Officios Present: Michael J. McClory
Douglas A. Mielock
III. Introduction of Guests – Everyone in the room introduced themselves starting with Nancy Little.

IV. Minutes of the Council Meeting of November 22, 2008 -

The Secretary reported that he had one complaint (subsequently retracted) and five mentions of appreciation for giving wider circulation to the minutes. The Secretary intends to keep up this practice as a general rule.

Upon a motion by Amy Morrissey and seconded by Tom Sweeney, it was unanimously:

RESOLVED: The November 22, 2008 Council Meeting Minutes are accepted as submitted.

(A copy is attached.)

V. Treasurer's Report  B  Mark K. Harder

Mark Harder solicited donations of $35 each for the Hearts and Flowers Fund. Checks can be made payable to “Hearts and Flowers Fund.”

Mark presented the final report for the year ending September 30, 2008. He explained the increase in the balance during the last year as arising mostly from budgeted amounts not spent (for example amicus briefs). He explained that the negative amount from the Publishing Agreement arose because payments had not been made to John Martin as required by our agreement with him, but that was cured this year.
Mark also provided and explained the highlights of the fiscal year to date information. He explained there is always a time lag in getting information from the State Bar. He may provide pro-rations in the future, but has not figured out how to pro-rate amounts to months yet. Although the receipts are less than expected for the year, some do show up later and he is not concerned at this time.

There were no questions or comments.

Upon a motion by Tom Sweeney, seconded by Amy Morrissey, it was unanimously:

RESOLVED: The annual financial report and year to date information submitted by the Treasurer are hereby accepted and approved. A copy will be attached to the minutes.

Copies are attached.

VI. Chairperson’s Report  
Nancy L. Little

Nancy Little explained the publishing agreement with ICLE. We have had one at least since the Estates and Protected Individuals Code (EPIC) was enacted. That agreement included John H. Martin. The agreement is up for renewal. There have been preliminary discussions. John Martin wants to cut back in the future. Any new agreement will encompass the Michigan Trust Code and all parties expect a transfer of keeping things up to date, with commentary to transfer to Mark Harder. Nancy Little circulated some of the proposed terms. The financial arrangements are similar to the prior arrangement.

Upon a motion made by George Gregory and seconded by Marilyn Lankfer it was:

RESOLVED: Nancy Little is hereby authorized to negotiate and enter into a Publishing Agreement with the Institute for Continuing Legal Education along the lines presented to the Council and as contained in the attached report.

The vote was 12 for, none against. Mark Harder abstained. (A copy of the outline prepared by Nancy Little is attached.)

VII. Report of Committee on Special Projects  
Amy M. Morrissey/Richard J. Siriani

Amy Morrissey reported that the following items had been discussed at length at the immediately preceding meeting of the Committee on Special Projects, and she recommended and moved the following from the Committee on Special Projects, Thomas Sweeney seconded, and it was:

RESOLVED: The Section continues to support the extension of the Personal Property Trust Perpetuities Act to include real property in order to achieve parity
between personal property and real property, and to prevent people from inadvertently having to pay a Federal generation skipping transfer tax;

FURTHER RESOLVED: The Section hereby supports House Bills 6539 and 6540 as passed by House;

With 13 voting members of the Council present, and upon a hand vote, the measure passed unanimously.

A discussion followed on substitute bills for House Bills 6539 and 6540. Upon a motion made by Amy Morrissey, seconded by Thomas Sweeney, it was:

RESOLVED: The Section supports amending the Personal Property Trust Perpetuities Act to prevent the Act allowing inadvertently generating a Federal generation skipping transfer tax, even if it does not achieve parity between real and personal property;

FURTHER RESOLVED: The Section hereby supports the substitute bills for House Bills 6539 and 6540.

A discussion followed about implementing the foregoing resolutions and providing guidance to the legislature.

Amy Morrissey volunteered to do the required report to the State Bar of Michigan. Jim Spica volunteered to testify before the Senate Committee. Nancy Little thanked them for volunteering and accepted their efforts.

Nancy Little asked Jim Spica to draft a brief explanation of the potential dangers of the generation skipping transfer tax trap so that she could e-blast it to the members. Jim described various ways of doing so. Nancy thanked him for volunteering.

Josh Ard pointed out that we had an announcement list which could be used at no additional cost to the Section. Mark Harder commented that the e-blasts looked more professional. Nancy Little thanked both of them for their thoughts and observations.

The discussion then turned to amending the proposed Michigan Trust Code to ensure that the Probate Court had jurisdiction over trust protectors. Amy Morrissey reported that the Committee on Special Projects recommended the change which was previously circulated by Mark Harder. Upon a motion made by Amy Morrissey, seconded by Mark Harder, it was:

RESOLVED: The Section supports an amendment to the Blue Back version of the Michigan Trust code to include section 7809(6) as presented to the Council.
(A copy of House Bills 6539 and 6540 as passed by the House and the substitute bills and section 7809(b) are attached.)

VII. Standing Committee Reports

A. Internal Governance

1. Budget  George W. Gregory reported that he had no report.

2. Bylaws  Marilyn A. Lankfer reported that she had no report.


5. Nominations  Michael McClory reported that he had no report.

6. Relations with the State Bar  Thomas F. Sweeney followed up on the implementation of the report he made last month. Last month he had discussed publishing articles in local newspapers. The Relations with the State Bar Committee, the Conservatorship & Guardianship Committee, and the Pamphlet Committee have working on the content. In response to an inquiry, Nancy Little indicated that this did need to be run by the State Bar, and that she would get the name of the person to Tom Sweeney.

    Nancy Little explained that the State Bar wanted to focus on articles about lawyers doing good things in the community (volunteering on charitable boards and other charitable work). We have focused more on things lawyers do as lawyers for the public. Nancy thinks the latter is a better idea.


B. Education & Advocacy Services for Section Members

1. Amicus Curiae  Ellen Sugrue Hyman reported that she had no report.

2. Continuing Education & Annual Probate Institute  Douglas Chalgian – Mary Hiniker of the Michigan Institute of Continuing Legal Education reported that the Schedule for 2009 is complete. She described various speakers including Ron Aucutt with a view from inside the Beltway and John Cameron on real estate issues for estate planning lawyers. Mary reported that George Gregory is working on the 50th Annual Probate Institute.
3. Section Journal  Nancy L. Little reported that she is still waiting for an answer from the State Bar on the ability to give members an option to receive the hard copy of the Probate & Estate Planning Journal.

4. State Bar Journal  Amy M. Morrissey reported that she spoke to Linda Novak, the editor of the State Bar Journal. The Section last’s dedicated issue was in October 2007. The earliest available month is March 2010. In the ensuing discussion it emerged that this would be convenient with the planned effective date of the Michigan Trust Code (projected to be April 1, 2010) and could tie into probable changes in the Federal Estate and Gift taxes. Mark Harder suggested that he could find authors from his Michigan Trust Code Committee. Amy volunteered to send the publication guidelines to Mark. All present thought it would be a good idea to tie down the March 2010 date.

5. Pamphlets  Ellen Sugrue Hyman reported that the Committee is reviewing the existing pamphlets. They will do so in two stages. First individual pamphlets are being reviewed by individual committee members. Then the Committee as a whole will review the pamphlets. Once the Committee as a whole has done its work, the Committee will report to the Section.

6. Electronic Communication  Josh Ard explained that the Section has three list servers. One is an announcement list. Josh suggested that the Section use that list instead of e-blasts. Josh will set up the announcement list so that officers will have posting power to make it more convenient for them to use. He suggested that the officers use it in the future.

Marlaine Teahan reported that the Section’s web site (http://www.michbar.org/probate/) now has a direct link to the Michigan Trust Code. In the past it took some effort to find it. Now it is the fifth item down on the list on the left of the page. Clicking on that item takes one directly to (http://www.michbar.org/probate/trustcode.cfm).

C. Legislation and Lobbying


2. Power of Attorney Act  Daniel P. Marsh submitted the attached written report. He reported that the committee is looking at criticism of the Michigan’s existing power of attorney act. He reported that based on an article published in the AARP publication and other activity that there is a nationwide push towards the Uniform Act. However, HB 4180 does not appear to be going anywhere this year.

3. Michigan Trust Code  Mark K. Harder reported that the December 12, 2008 issue of the Leimberg Estate Planning listserv had an article which provided a favorable mention of the Michigan Trust Code.
Mark reported that the Committee has completed its review of the Blue Back and has submitted non-substantive comments to Tim Reeves of the Legislative Service Bureau. Becky Bechler will follow up next week.

Mark also reported that the Executive Committee of the Michigan Probate Judges Association met on December 5, 2008. At that time the comments of the Michigan Probate Judges Association became public. (A copy is attached.) The Michigan Trust Committee had met to discuss the comments on sections 108, 110, 111, 601, 604, 809 and 1004. Although Mark had a telephone conversation with Judge Murkowski who headed a committee on behalf of the Michigan Probate Judges Association, it was as Judge Murkowski was en route to another meeting, so it was not in depth. He and Judge Murkowski and others are trying to arrange a meeting of stakeholders to discuss the Judges’ issues and some others. Tracy A. Sonneborn of the Attorney General’s office has issues with the Michigan Trust Code. The Michigan Bankers Association committee has met, reviewed the Judges’ comments, and wants to be at the meeting. The Bankers representatives are expected to be Mike Zacek of JP Morgan Chase, John Kessler of Chemical Bank and Jeff Power a non-banking representative. The Probate & Estate Planning Section will be represented by Mark Harder, Douglas Chalgian and Douglas Mielock.

Mark indicated it was premature to discuss the Judges’ comments. The Committee is not sure about the full nature of the Judges’ concerns.

The groups have yet to schedule a date. Mark hopes the group can meet and have a report at the Council Meeting. Mark reported that Douglas Chalgian told him that he was heartened that the Trust Code the Council worked on for five years only seven areas of concern to the Judges. Mark hoped to have a more complete report by the next meeting.

Rick Siriani had a number of questions about the process and Mark Harder responded to them.

D. Ethics, Professionalism and Standards


4. Practice Management B Patricia Ouellette reported there was no report.

E. Administration of Justice

1. Contested and Uncontested Probate Proceedings B Shaheen I. Imami / Douglas G. Chalgian. Shaheen I. Imami reported that he and Doug Chalgian are looking at this area from a long range perspective. They are looking for and reviewing what they regard
as occasional, but recurring issues which could be rectified by changes to statutes or court rules. Shaheen reported that *Nacovsky v Hall (In re Griffin)*, Michigan Court of Appeals Docket No. 277268 (December 2, 2008), held that the Michigan policy on clauses which propose to disinherit someone for challenging a trust or a provision of a trust is that same as the policy for wills, that is the clause is ineffective if there is probably cause to challenge the trust. A discussion of the case followed. Mark Harder reported that the result would be the same under the Michigan Trust Code.

2. Uniformity of Practice Derek A. Walters reported that he is trying to get access to the Probate Registers list serve. He thinks it would be a good source of information. He has had no success. Mike McClory suggested that he contact Pam Jarvis, the current president of the Probate Registers Association.

F. Practice Issues, Related Areas & Liaisons


2. Transfer Tax Thomas F. Sweeney reviewed the Tax Nugget which was previously e-mailed to council members, a copy of which is attached. It reviews the *Jelke* case and dollar for dollar discounts for the built in gains and capital gains tax in closely held corporate stock. Tom noted this is the second time a Court of Appeals has done so. He compared to the taxation of IRAs which he sees as similar, but that to date the Courts have not.

3. Guardianships and Conservatorships Constance Brigman previously reported to the Secretary that she would not be able to attend and that she had no report to deliver orally or in writing. She was hoping to get responses to inquiries she sent to committee members, but she had not gotten any, perhaps because of her change of e-mail addresses. Her new e-mail addresses are connie@brigmanlaw.com and conniebrigman@gmail.com


5. Elder Law/Liaison to Elder Law Section Amy R. Tripp reported that the Elder Law Section has devoted considerable efforts to oppose HB 5282 and 5283, the “Blue Cross Bills.” Blue Cross claimed to be losing money on some kinds of policies, but the was based on an error which Attorney General Mike Cox caught. He got Blue Cross to admit to this error. He is also opposed to these Bills. These bills will result in higher costs for individuals and less oversight of Blue Cross. The Elder Law Section sees this as a bad thing for a number of reasons for seniors. Blue Cross gets a tax exemption in order for them to be the insurer of last resort. It was clear the Amy had a wealth of information on the topic, felt strongly about it and that she was restraining herself. The Elder Law section’s position is at [http://www.michbar.org/publicpolicy/positionpdfs/positionPDF614.pdf](http://www.michbar.org/publicpolicy/positionpdfs/positionPDF614.pdf)
6. Family Law/Family Law Section Liaison – Patricia M. Ouellette reported that she had no report.

7. Real Property Law/Real Property Section Liaison – Daniel P. Marsh is coordinating with the Real Property Section. He thinks we have common areas of interest in changes to legislation include property tax uncapping issues, real estate transfer tax issues, and tenancy by the entireties for real estate held in trust. Dan believes both sections would benefit from interaction on these topics and hopes to work with the incoming chair of the Real Property Section and attend the next meeting. Jim Spica pointed out that it would be useful to coordinate the application of the rule against perpetuities as it applies to real estate held in trust.


9. Tax and Tax Section Liaison – Lorraine F. New reported that the Taxation Section has taken its first public policy stance on legislation since it supported the repeal of the Michigan Inheritance Tax in 1993. They are opposed to HB 6122 which would impose a transfer tax when more 80% of the owning entity is transferred. Lorraine indicated she would share our concerns about real property taxes as discussed as part of the Real Property Law discussion above.

10. State Bar Liaison – Richard J. Siriani reported that he had no report.

11. Court Rules and Forms Committee Liaison – Marlaine C. Teahan indicated that she had no report.

12. Trust Institutions and Liaison with Michigan Bankers Association – Susan Allan, Chair indicated that she had no report.


14. Law School Liaison – Josh Ard indicated that he had no report.

X. Other Business – Douglas Mielock reported that there are two Probate Court Judicial openings. One in Lenawee County (Judge Margaret Noe is vacating) and the application deadline is December 16, 2008. The other is in the 5th District Probate Court which encompasses Alger and Schoolcraft Counties (Judge William W. Carmody is vacating). The application deadline is December 16, 2018.

XI. Hot Topics – none were brought up.
XI. Adjournment – there being no further business, the meeting was adjourned with the consent of all present at 11:25 am.

Respectfully submitted,

George W. Gregory, Secretary
Probate and Estate Planning Section

Agenda

Saturday, December 13, 2008

State Bar of Michigan
Michael Franck Building
306 Townsend Street
Lansing, MI 48933-2012

9 a.m. Committee on Special Projects Meeting
10 a.m. Council Meeting
NOTICE OF MEETING

Saturday, December 13, 2008

9:00 a.m. Meeting of Committee on Special Projects

10:00 a.m. Council Meeting

There will be a meeting of the Committee on Special Projects on November 22, 2008 at the Michael Frank Building, 306 Townsend Street, Lansing, Michigan, 48933-2012 beginning at 9:00 a.m., followed by a Meeting of the Council of the Probate and Estate Planning Section at 10:00 a.m.

George W. Gregory
Secretary
NEXT MEETING

January 10, 2009

University Club East Lansing, Michigan

MEETING OF
COMMITTEE ON SPECIAL PROJECTS MEETING AT 9:00 A.M.

COUNCIL MEETING AT 10:00 A.M.
Schedule of Meetings

MEETING OF
COMMITTEE ON SPECIAL PROJECTS MEETING AT 9:00 A.M.

COUNCIL MEETING AT 10:00 A.M.

December 13, 2008
State Bar Building, Lansing, Michigan

January 10, 2009
University Club East Lansing, Michigan

February 14, 2009
University Club East Lansing, Michigan

March 14, 2009
University Club East Lansing, Michigan

April 18, 2009
University Club East Lansing, Michigan

June 6, 2009
University Club East Lansing, Michigan
I. Call to Order

II. Excused Absences –
   Harold Schuitmaker
   Douglas Chalgian

III. Introduction of Guests

IV. Minutes of the Council Meeting of November 22, 2008

V. Treasurer's Report B Mark K. Harder

VI. Chairperson's Report B Nancy L. Little

VII. Report of Committee on Special Projects B Amy M. Morrissey/Richard J. Siriani

VII. Standing Committee Reports
   A. Internal Governance
      1. Budget B George W. Gregory
      2. Bylaws B Marilyn A. Lankfer
      3. Michael Irish Award B Brian V. Howe
      4. Long-Range Planning B Douglas G. Chalgian / Lauren M. Underwood
      5. Nominations B Michael McClory
      6. Relations with the State Bar B Thomas F. Sweeney
      7. Annual Meeting B Harold Schuitmaker
   B. Education & Advocacy Services for Section Members
      1. Amicus Curiae B Ellen Sugrue Hyman
      2. Continuing Education & Annual Probate Institute B Douglas Chalgian
      3. Section Journal B Nancy L. Little
      4. State Bar Journal B Amy M. Morrissey
      5. Pamphlets B Ellen Sugrue Hyman
      6. Electronic Communication B Josh Ard
C. Legislation and Lobbying

1. Legislation ▶ Harold G. Schuitmaker/John R. Dresser
3. Michigan Trust Code ▶ Mark K. Harder

D. Ethics, Professionalism and Standards

1. Ethics ▶ J. David Kerr
2. Unauthorized Practice & Multidisciplinary Practice ▶ Bob Taylor
3. Specialization and Certification ▶ James B. Steward
4. Practice Management ▶ Patricia Ouellette

E. Administration of Justice

2. Uniformity of Practice ▶ Derek A. Walters

F. Practice Issues, Related Areas & Liaisons

1. Charitable Giving/Exempt Organizations ▶ Robin D. Ferribby
2. Transfer Tax ▶ Thomas F. Sweeney
3. Guardianships and Conservatorships ▶ Constance Brigman
4. Business Law/Liaison to Business Section ▶ John R. Dresser
5. Elder Law/Liaison to Elder Law Section ▶ Amy R. Tripp
6. Family Law/Family Law Section Liaison ▶ Patricia M. Ouellette
7. Real Property Law/Real Property Section Liaison – Daniel P. Marsh
8. State Bar Section to Section Action Team Liaison – Robert Tiplady
9. Tax and Tax Section Liaison – Lorraine F. New
10. State Bar Liaison ▶ Richard J. Siriani
11. Court Rules and Forms Committee Liaison ▶ Marlaine C. Teahan
12. Trust Institutions and Liaison with Michigan Bankers Association ▶ Susan Allen, Chair
14. Law School Liaison – Josh Ard

X. Other Business

XI. Hot Topics
XII. Adjournment
MINUTES OF THE MEETING OF THE COUNCIL
OF THE PROBATE AND ESTATE PLANNING SECTION

November 22, 2008     10:00 a.m.
University Club, East Lansing, Michigan

I. The meeting was called to order after a one hour meeting of the Committee on Special
Projects, by Nancy L. Little at 10:00 a.m., at the University Club, East Lansing, Michigan.

II. A.  Council Members Excused:

Harold Schuitmaker
Shaheen Imami
Patricia M. Ouellette

B. Other Council Members Absent

Robin D Ferriby

B. Council Officers and Members Present:

Nancy L. Little
Douglas A. Chalgian
George W. Gregory
Mark K. Harder

William J. “Josh” Ard
Ellen Sugrue Hyman
Marilyn A. Lankfer
James B. Steward
Robert P. Tiplady, II

Hon. Kathryn A. George
Amy N. Morrissey
Rebecca A. Schnelz
Thomas F. Sweeney
Marlaine Teahan
Richard J. Siriani
Robert M. Taylor

J. David Kerr
Hon. David M. Murkowski
Susan M. Allan
Ex-Officio Members of the Council

Douglas A. Mielock

C. Others Present:

John Dresser      Ken Seavoy
Tess Sullivan     Rhonda Clark
Jill Goodell      Lorraine New
Carol Sewel       Kathleen Goetsch
Rick Mills        Emily Taylor
Constance L. Brigman       Amy Tripp
Rebecca Bechler   J. V. Anderton
Derek A. Walters  Kristin D. Arnett
Melisa Mysliwiec  James P. Spica
Hon. Phillip E. Harter  Jeanne Murphy

III. Introduction of Guests: All attendees, including guests, introduced themselves.

IV. Secretary’s Report: The minutes of the November 1, 2008 meeting which were previously circulated were approved as corrected with the consent of all present upon a motion made by Mark Harder and seconded by Tom Sweeney.

V. Treasurer’s Report: Mark K. Harder reported that the State Bar was running late due to the closing of its books for the fiscal year, so he had no new information since the last report. He suggested that if people got reimbursement requests to him by Wednesday and if things went according to plan the State Bar would cut a check the following Friday. He reviewed purchasing procedures and that if the section could be billed, we could provide our tax identification number and avoid sales tax on many purchases. The State Bar tax identification number is 38-6006823. We need a member of the University Club to host our meetings at the University Club. Doug Chalgian has volunteered to do so. Doug stated that he did agree to do so with the understanding that the Section will pay for the meetings.

VI. Chairperson’s Report: Nancy Little pointed out that Jeanne Murphy of ICLE was present at the meeting. ICLE is presenting short *PowerPoint* presentations, often ten ideas in ten minutes. Jeanne presented them as a potential Section membership for those presentations the Section co-sponsored. ICLE is flexible on the ten ideas in ten minutes and is willing to take fewer. A general discussion of the on-line PowerPoint presentations followed. Potential topics included: Defending Your Fees in Probate Court; Identifying Vulnerable Adults; Transfer Taxes on Real Estate; Uncapping of Real Estate; and Medicaid. Some people volunteered and Jeanne Murphy noted their names. Nancy discussed e-blasts as a Section benefit.
The Section sent out last month’s Tax Nugget as an e-blast. She has had positive feedback and no negative feedback.

VII. **Report of the Committee on Special Projects**: The Guardianship & Conservatorship Committee will work with the Jurisdiction Committee on Guardianship & Conservatorship issues which involve multiple states. The common areas of interest is how it works in other states and the NCCUSL Uniform Act and what would work best in Michigan. If anyone is interested in this area they should see Doug Chalgian or Constance L. Brigman. Robert Tiplady is looking into Unauthorized Practice of Law and Protective legislation. The Real Property liaison, is being asked to look into issues involving residential property and uncapping and the use of nominees by trustees as a reason to deny the personal residence property tax exemption. Although there is interest in a Statute of Repose, no one seems interested in working on it. The committee was still looking for volunteers to work on projects from last month’s meeting, and although some emerged, more were needed.

VIII. **Standing Committee Reports –**

**A. Internal Governance**

1. **Budget** – George W. Gregory, chair, reported there was no report.

2. **Bylaws** – Marilyn Lankfer, chair, reported there was no report.

3. **Michael Irish Award** – Nancy Little reported that it had been awarded to Susan S. Westerman at the Council’s dinner on October 31, 2008, and that Susan S. Westerman was surprised and touched at the time and has sent a nice thank-you note.

4. **Long-Range Planning** – Douglas G. Chalgian reported there was no report.

5. **Nominations** – Michael J. McClory, chair: No report received.

6. **Relations with the State Bar** – Thomas F. Sweeney, chair reported that the State Bar has charged all Sections to (1) promote and publicize actions that attorneys in each Section undertake for the citizenship and large, and (2) provide assistance to legislators. Ellen Sugrue Hyman called him about pointing out the Pamphlets on Guardianships & Conservatorships. The Pamphlets Committee is considering an expansion of their scope. Tom suggested the media as a way to gain publicity. He is considering a series of articles on a particular subject. The first is an alternative to guardianships. George Gregory suggested that this be coordinated with the Elder
Law and Disability Rights Section. Tom thought he would start with an article on personal care. Nancy Little noted that the State Bar will assist with publicity. Judge Phillip Harter stated that he would be willing to post articles sponsored by the Section on his web site. Others mentioned the use of the Section website. Tom explained that he would like to start with a local chain and then take it to other publications and then post it after no more publications were interested. He might give credit to one or more of the publications. The Council then discussed ways of the Section establishing a web site for the public, and discussed ways of getting out the word about such a web site.

7. **Annual Meeting** – Harold Schuitmaker, chair: No report received.

B. **Education & Advocacy Services for Section Members**

1. **Amicus Curiae** – Ellen Sugrue-Hyman, chair reported that Douglas G. Chalgian has a hearing on an out of state guardianship in Oakland County Circuit Court. This is an appeal from the Oakland County Probate Court. Ellen also reported that Tracy L. Sonneborn, an Assistant Attorney General of the Michigan Attorney General’s Office is pursuing a case of a third party beneficiary in Macomb County Probate Court where a care-giver allegedly had an improper influence on an estate plan.

2. **Continuing Education & Annual Probate Institute** – Douglas G. Chalgian, chair reported that he had a solid program and was working with a number of sponsors. He was having some difficulty with the Dennos Museum, and unless it is resolved soon he will look into alternative sites. Greenleaf would be sponsoring the speakers dinner again this year.

3. **Section Journal** - Nancy L. Little, chair reported that at the moment the electronic delivery is the only way it is provided to members of the Section who have only been admitted to practice in Michigan for less than six years. She has asked the State Bar if there is a way to have people opt out of hard copy when they pay their dues, but has not received a response. She is considering moving to a decade of practice. The next issue will come out by the end of the year.

4. **State Bar Journal** – Amy M. Morrissey, chair reported that there was no report.

5. **Pamphlets** - Ellen Sugrue Hyman, chair asked for feedback about the pamphlets. A discussion of expanding them to PowerPoint followed. Responding to a suggestion, Ellen stated she would check
with the State Bar if we can track requests and/or downloads. A
discussion about making them more available to the public followed
including making them available on web sites such as Judge Phillip
Harter’s Calhoun County web site.

the cost of e-blasts and alternative methods of getting the same
results.

C. **Legislation and Lobbying**

1. **Legislation** - Harold Schuitmaker was excused, but at his request
George Gregory reported that Harold and George thought that SB
1599 (a copy is attached) was probably dead on arrival. A discussion
of the Power of Attorney Act followed. The Section does not like the
current bill, and would prefer nothing. We thought it was dead for
the year. Rebecca Bechler of Public Affairs Associates, the Section’s
lobbyist, responded to an inquiry that anything can happen in the
lame duck session.


3. **Michigan Trust Code** - Mark K. Harder, chair, reported that Tonya
Schuitmaker unexpectedly introduced the blue–back copies of the
Michigan Trust Code. We had discussed introducing it this session -in
order to see if groups were interested that we did not anticipate. Judge
David Murkowski indicated that a Committee of the Michigan Probate
Judges’ Association has met and narrowed their issues down to the
following sections of the proposed Trust Code: 108, 111, 601, 604, 809,
and 1004. He was not comfortable sharing the Judges Association’s
problems concerns until the Board of the Michigan Probate
Judges’ Association meets. The Board might have fewer or more
concerns, and the Board speaks for the Association. He hopes to have a
response by the December 13th meeting of the Council. A discussion of
the blue–backs followed. Many questions were asked as to what
happened, why it happened, the impact on other interested parties and the
reactions of other interested parties. The Michigan Trust Code
Committee has sent comments to the Legislative Service Bureau on what
is now House Bills 6716 though 6720. Deadlines and procedural
mechanics for submitting additional comments or changes were
discussed. The Council in the past had authorized the MTC Committee
to approve non-substantive changes. However, we expect substantive
suggestions from the Michigan Probate Judges’ Association. Mark
Harder asked for the officers to approve authorization to negotiate
substantive changes if the situation warrants. A motion was made -by
Mark Harder and seconded by Douglas Mielock and subsequently
amended with their consent during the extensive discussion which followed. Judge Murkowski asked about dates and mechanics and compared them with the Michigan Probate Judges’ Association meeting dates and the schedule of the Council and the needs of the Legislative Service Bureau. A motion to table the resolution failed. It was upon the unanimous vote of the Council:

RESOLVED: The Officers of the Council may approve substantive changes to the Michigan Trust Code after the December 13, 2008 meeting.

FURTHER RESOLVED: No changes shall be made by the Officers prior to the December 13, 2008 meeting and any such changes made after the December 13, 2008 meeting shall be reported to all of the Council Members on the Council listserv as soon as they are made and shall be placed on the agenda of the next meeting of the Council.

Mark Harder circulated a two page summary of the Michigan Trust Code. A lengthier version is on the Section website at http://michbar.org/probate/pdfs/MTCstatusreport_0906.pdf. Mark Harder asked all present to support and to get the public to support the Michigan Trust Code.

In response to inquiries to Rebecca Bechler, she responded that there was no reason to expect hearings this year. Nancy Little expressed regret that the bills were introduced in a way which might make other groups nervous about our intentions. We do want input from the Probate Judges Association and the Michigan Bankers Association. She volunteered to provide a speaker for the Judges. She also asked those present to support the Michigan Trust Code.

There was a discussion about following up with Representative Tonya Schuitmaker. It was decided that Rebecca Bechler, our lobbyist would do so.

D. Ethics, Professionalism and Standards

1. **Ethics** – J. David Kerr, chair, reported that there was no report.

2. **Unauthorized Practice & Multidisciplinary Practice** – Robert Taylor, chair, reported that there was no report.

3. **Specialization and Certification** – James B. Steward, chair, reported that there was no report.
4. **Practice Management** – Patricia M. Ouellette, chair, indicted that there was no report.

E. **Administration of Justice**

1. **Contested and Uncontested Probate Proceedings** – Shaheen I. Imami, co-chair, was excused and Douglas G. Chalgian, co-chair, reported there was no report.

2. **Uniformity of Practice** – Derek A. Walters, chair, reported that there was no report.

F. **Practice Issues, Related Areas & Liaisons**

1. **Charitable Giving/Exempt Organizations** - Robin D. Ferriby, chair: No report received.

2. **Transfer Tax** – Thomas F. Sweeney, chair, indicated that Stephen Leimberg’s listserv had an article written by Howard Zaritsky which indicated that last month’s Tax Nugget missed that Barak Obama’s proposal in the estate tax credit equivalent would be adjusted for cost of living.

3. **Guardianships and Conservatorships** – Constance Brigman, chair, submitted a written report. It is attached.

4. **Business Law and Business Law Section Liaison** - John R. Dresser, chair, reported that the new chair of the Business Law Section organized a committee on sustainability issues and how sustainability could help Michigan businesses. The Business Law Section will work with other organizations, such as the Michigan Association of CPAs, and present a program on sustainability in March or April. Governor Granholm is interested. The Environmental Law Section is going to create a separate committee on sustainability to help Michigan businesses. Topics include suppliers trading in carbon credits. Nancy Little asked that John draft a blurb for our Section Journal.

5. **Court Rules and Forms** – Marlaine Teahan, chair, reported that she had no report.

6. **Elder Law/Elder Law and Disability Rights Section Liaison** – Amy Tripp, chair, reported that the Uniform Guardianship Committee was discussed at the Elder Law and Disability Rights Section Council. They saw no reason to create a separate committee as the Probate and Estate Planning Section Committee on this topic has two
members who are very active in Elder Law and Disability Rights and her presence at our meetings as Liaison will keep the Elder Law and Disability Rights Section informed. The Estate Recovery Bill is a hot topic at their Section. The Federal government has rejected Michigan’s law. They think nothing will be done until Barak Obama is sworn in, and then they do not know what it will happen be. Nancy Little asked about the disability group from the State Bar and provided information about it. Amy said she would look into it.

7. **Family Law/Family Law Section Liaison** - Patricia M. Ouellette indicated that she had no report.


9. **Taxation Section Liaison** – Lorraine F. New, chair, reported that the Taxation Section Committee Meetings are primarily continuing education sessions. They are not on that Section’s web site, and one needs to join both the Taxation Section and the relevant Committee to learn about them.

10. **State Bar Liaison** – Richard Siriani reported that he had no report

11. **Trust/Michigan Bankers Association Liaison** – Susan Allan indicated that she had no report.

12. **Michigan Probate Judges** - Hon. Kathryn A. George indicated that she had no report.

IX. **Other Business**:

The consensus was to continue with e-blasts, although Nancy Little was in favor of Josh Ard verifying we had a [better way to do so](#).

X. **Hot Topics**:

No one brought up any hot topics at the appropriate time.

Nancy Little reminded everyone that the next meeting would be at the State Bar Offices, 306 Townsend Street, Lansing.

XI. **Adjournment** - the meeting was adjourned at 12:00 noon.

Respectfully submitted,
George W. Gregory, Secretary
A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," (MCL 700.1101 to 700.8102) by adding section 3210.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

SEC. 3210. (1) AN INDIVIDUAL MAY, IN A WRITING SIGNED AND DATED BY THE INDIVIDUAL, DIRECT THE FUNERAL ARRANGEMENTS TO BE PROVIDED AFTER HIS OR HER DEATH AND THE HANDLING AND DISPOSITION OF HIS OR HER REMAINS. THE PERSON WHO HAS THE RIGHTS AND POWERS TO MAKE DECISIONS REGARDING THE FUNERAL ARRANGEMENTS AND THE HANDLING AND DISPOSITION OF THE REMAINS UNDER SECTIONS 3206 TO 3208 SHALL MATERIALLY FOLLOW THE DIRECTIONS TO THE EXTENT ALLOWED BY LAW, IF BOTH OF THE FOLLOWING REQUIREMENTS ARE MET:

(A) THE DIRECTIONS ARE SUFFICIENTLY CLEAR, COMPLETE, AND DETAILED SO AS TO NOT PRESENT ANY MATERIAL AMBIGUITY.
SUMMARY OF KEY POINTS CONCERNING THE MICHIGAN TRUST CODE

PREPARED BY THE MICHIGAN TRUST CODE COMMITTEE

FALL 2008

Background

The MTC drafting effort was led by Probate & Estate Planning Section of the State Bar of Michigan and Michigan Bankers Association Trust Counsel Committee

The MTC is the end product of a painstaking, comprehensive 5 year drafting process with representation from diverse constituencies

The Michigan Trust Code provides important benefits to Michigan’s citizens

- Provides certainty
  - Many questions currently are unanswered because of sparse case law and incomplete and antiquated statutes
  - The Michigan Trust Code will become part of the enacting legislation for EPIC, thereby providing a single source for answers to questions involving estates and trusts and the settlement of decedent’s estates.
- Modernizes the law of trusts
- Provides uniformity with the laws of other states
  - Based on the Uniform Trust Code (“UTC”)
  - Twenty states (including Ohio, Florida, and Arizona) and the District of Columbia have enacted the UTC or a variation of it.
  - Enacting legislation is currently pending in Connecticut, Massachusetts, and Oklahoma.
- Creates a level economic playing field for Michigan banks
  - Michigan residents are free to appoint persons and institutions in UTC states such as Ohio, Florida, and Arizona as trustees of their trusts and to subject the trusts to the laws of the states where the trustees are located.
  - When they do so, however, they remove the administration and the management of these trusts to these other jurisdictions.
  - The MTC neutralizes the attraction of other states as places to domicile trusts, thereby retaining the management and administration of these trusts, and the jobs this work brings.

The MTC preserves well established Michigan law

- 30 provisions are essentially consistent with either existing Michigan common law or current statutes.
- 48 sections involve modification of sections of the UTC or adding sections so the MTC more closely follows existing Michigan law
• 34 sections represent common sense “gap fillers” that are consistent with the law or practice in Michigan today
• Only 3 provisions represent significant departures from current law (see below).

The MTC makes important changes to the UTC to preserve longstanding Michigan law

• Provisions for giving notice of the existence of trusts and accountings to beneficiaries follow current EPIC provisions, not the UTC.
• Preserves voluntary trust registration.
• Provisions dealing with the rights of creditors of trust beneficiaries follow current Michigan law and the Restatement (Second) of the Law of Trusts and rejects most of UTC Article 5.
• Preserves existing law permitting a decedent’s creditors to bring claims against the decedent’s revocable living trust when no probate proceeding exists or the probate estate is inadequate.
• EPIC provisions dealing with environmental matters, tax matters, and payment provisions have each been retained.
• Preserves longstanding Michigan law with respect to recovery of attorneys fees by trustees and beneficiaries

The MTC makes few significant changes to Michigan law

• Settlers of charitable trusts will have standing to enforce the terms of the trusts.
• Standard of capacity to create revocable trusts will be that required to make a Will, thereby using a consistent standard for the two instruments most commonly used to pass property at death.
• Trusts established after the effective date of the Code will be presumed to be revocable unless they state they are irrevocable.

The MTC fills important gaps in current law

• EPIC rules related to ademption, exoneration, and penalty or “no contest” provisions that are applicable to Wills will apply to trusts.
• Representation provisions found in EPIC sections 1209 and 1403 have been extended to nonjudicial settings.
• Provides a statutory basis to terminate small or uneconomic trusts.
• Provides a statute of limitations for challenges to the validity of revocable trusts used as Will substitutes.
• Fills numerous gaps in current law related to accepting or declining trusteeships, filling vacancies, resignation, and removal of trustees.
• Provides comprehensive rules related to the duty of loyalty of trustees.
• Provides rules to govern trust protectors.
• Authorizes and validates the use of certificates of trust beyond the area of real estate transactions.
By Candace Crowley

This issue of Connections marks the first communication to new leaders of the 133 affinity bar associations and the 39 State Bar sections working to improve the administration of justice in Michigan during the 2008-2009 Bar leadership year. Welcome aboard, new leaders, and a warm hello to those of you who remain at the head of your organization!

Connections is meant to improve communications among all of us so we can learn from each other, use our resources most effectively, ask for help from each other, and find allies to enlist in common goals. The pictures are meant to help us visualize your activities and stimulate thinking as to whether a featured event is something your audience is ready for. “Out and About” showcases your programs and introduces your leaders—we are always looking for information, so send us ideas to include in upcoming issues.

One of the most important messages from the State Bar is that we are here to support your work and to help you succeed. We can assist you in finding partners, developing materials, or strategizing policy work. Our presidents are always open to supporting your events, and this year is no exception. Ed Pappas is a friendly but competitive person and is eager to attend more events than any of his predecessors. Please invite him to join you at a meeting, discussion, or celebration. I can help you with his calendar, so give me a shout. Most of all, let me know how the State Bar can help you with your work this year.

The Justice Initiative Committee and its disabilities work group are looking for attorneys who are willing to participate in a survey to determine the accessibility of courts for persons with disabilities. A note to this effect was sent to section leaders earlier this year, but the work group is still looking for two populations: (1) attorneys who have represented clients with disabilities and (2) attorneys who would voluntarily identify themselves as people with a disability that requires
accommodation. Those who are identified should be willing to participate in a survey to identify barriers/challenges/issues.

If you or your members can help identify attorneys within these populations, the disabilities work group would be very appreciative. Please contact Kay Conklin.

As we know from the section chair orientation on October 2, much energy, sharing of ideas, and potential policy and program partnerships can be realized through healthy sharing of information with each other. A section chair and co-chair listserv has been set up for the purpose of continuing conversations, posting inquiries about section activities and interest in policy or program partnerships, and sharing information about key section events. You can access the listserv by typing in the address line of your e-mail screen. We encourage section leaders to use the listserv.

One way the State Bar keeps connected with the work of the sections is through in-person reports to the Board of Commissioners. A calendar of Board meetings is included with this issue of Connections. Please let Candace Crowley know if you would like to make a brief presentation to the Board and keep your sections' challenges and accomplishments in front of Bar leadership.

Each section has a Board of Commissioner liaison appointed to keep communication lines open and to assist sections in achieving their goals. A list of 2008-2009 liaisons is available on the State Bar website. Please include your liaison on your listservs and newsletter mailing lists, and be sure to send notices of council meetings to your liaison. Your work is important to key strategic decisions made by the Board; having an informed liaison will help those decisions be responsive to section interests.

Like many State Bar sections, the Taxation Section has a robust scholarship and grant award program that recognizes the work of individuals and programs whose accomplishments follow the goals of the section. Earlier this year, the section identified seven programs and 17 individuals whose exemplary work was rewarded with a financial stipend. Five of the grants were awarded to programs that are part of the Access to Justice program, and those awards were directed through the ATJ Fund. Kudos to the Taxation Section for using the ATJ Fund to make its grants. For more information on how to use the ATJ Fund, contact Linda Rezer at (517) 346-6401.

The Michigan Lawyers Auxiliary and the Public Outreach Committee of the State Bar announce the availability of an updated booklet for young people in Michigan. Janet Welch's foreword explains that "The State Bar of Michigan offers this booklet to help you be aware of your rights and responsibilities under the law and to be a responsible citizen of Michigan and the United States. It
REPORT FOR NOV. 22, 2008 MEETING OF
Probate Council and Special Projects Committee

In addition to myself, the Guardianship and Conservatorship Committee has the following members:

Kristen D. Arnett (kris.arnett@fosterzack.com)

Rhonda M. Clark-Keuer (davidekeuer@gmail.com)

Hon. David M. Murkowski (david.murkowski@kentcountymi.gov)

Rebecca A. Schnetz (tschnetz@oakgov.com)

Amy Tripp (cipp@miederslaw.com)

1. The Guardianship and Conservatorship Committee’s mission is to identify and participate in arriving at practical solutions to perceived and actual abuses under current law and court rule. Increasingly, incapacitated adults have contacts with more than one state. A person may be domiciled in one state but physically present in another.

2. The Committee on Special Projects may undertake a project regarding recommending legislation that pertains to venue of a guardianship or conservatorship. That project will overlap with the mission of the Guardianship and Conservatorship Committee.

3. The Guardianship and Conservatorship Committee has before it the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. The UAGPPJA deals only with jurisdiction of adult guardianships relating to multiple jurisdiction, transfer, and out of state recognition. It has been endorsed by the National Guardianship Foundation, the National College of Probate Judges, and the American Bar Association.

4. The Guardianship and Conservatorship Committee asks for the Council’s authorization to review the UAGPPJA and to form a recommendation for the Council and the Committee on Special Projects. A summary of the key parts of the UAGPPJA follows:

- Home state. The state in which the person was physically present for at least 6 consecutive months immediately before commencing the proceeding.

- Significant connection state. The state in which the person has a significant connection other than mere physical presence, and where substantial evidence concerning the person is available. Some of the factors that may be considered in deciding whether the person has a significant connection include:
  - Location of their family and others required to be given notice.
  - Length of time the person was physically present in the state (at any time).
  - Location of the person’s property.
Other ties to the state such as voting registration, filing of state or local tax returns, vehicle registration, driver’s license, social relationships, and receipt of services.

Jurisdiction for the protective proceeding is determined using a three-level priority: (1) the home state, (2) the significant-connection state, and (3) other jurisdictions. Here is how it works:

The home state has primary jurisdiction to appoint a guardian or conservator or to enter another protective order. This priority continues for up to six months following a move to another state.

The significant-connection state has jurisdiction if: (1) the person has not had a home state within the past six months (2) the home state declined jurisdiction, or (3) no proceeding has been commenced in the home state or another significant connection state, no objection to the court’s jurisdiction has been filed, and the court concludes that it is the most appropriate forum.

Other jurisdictions. A court in another state has jurisdiction only if the home state and all significant states have declined jurisdiction or the person does not have a home state or significant connection state.

NOTE: These are general principles. If a person is physically present in a state and there is an emergency, then the local court can appoint a guardian. A court in a state where the person has real or tangible personal property can appoint a conservator or issue another protective order with respect to that property. Lastly, a court without jurisdiction as above may consider a petition to accept the transfer of an already existing guardianship or conservatorship from another state.

Transfers to another state require orders from the transferring state and the receiving state. The transferring court must find that the person will move permanently to another state, that adequate arrangements have been made for the person or their property in the receiving state, and that the receiving state will accept the case. The transferring state will not dismiss their case until an order from the receiving state has been filed. The receiving state must give deference to the transferring court’s finding of incapacity and its selection of the guardian or conservator.

A guardian or conservator may register their orders in other states. Registration authorizes the guardian or conservator to exercise all powers enumerated in the order except as prohibited by the laws of the registration state.

SUMMARY. The UAGPPJA helps to resolve issues concerning original jurisdiction, registration, transfer and out-of-state enforcement. This summary is a synopsis of a summary prepared by the NCCUSL.

Constance Brigman, Chair
From: NGA Executive Director [ngaexecutivedirector@guardianship.org]  
Sent: 11/08/2008 7:51 PM  
To: Nancy Little; Doug Chalgian; George W. Gregory  
Cc: Amy Morrissey; Siriani, Richard J.; NGA Executive Director  
Subject: Re: UAGPPJA MI Drafts  

Hello, everyone. I am responding from my National Guardianship Association email address.

I would be very happy to assist with moving the Uniform Act forward in Michigan. Please let me know how I can help.

Additionally, I can connect the Committee with a network of national leaders who can promote passage, including the appropriate people at the Uniform Law Commission.

Terry Hammond  
Executive Director  
National Guardianship Association  

----- Original Message -----  

From: Nancy Little  
To: Doug Chalgian; George W. Gregory  
Cc: Amy Morrissey; Siriani, Richard J.; Terry W. Hammond  
Sent: Monday, November 03, 2008 3:12 PM  
Subject: RE: UAGPPJA MI Drafts  

Yes, his information is:

Terry Hammond, Executive Director of the National Guardianship Association,  
ngaexecutivedirector@guardianship.org  
2207 Hancock Drive, Austin, TX 78756, Phone: 512-459-3000. Here is a link to the homepage:  http://www.guardianship.org  

Terry's address at his law office is 1020 Montana Avenue, El Paso, TX 79902; telephone 915-534-7000, Fax 915-534-7672.  

We also sent this info to the Guardianship and Conservatorship Committee.

From: Doug Chalgian [mailto:chalgian@mielderlaw.com]  
Sent: Sunday, November 02, 2008 9:22 AM  
To: George W. Gregory; Nancy Little  
Cc: Amy Morrissey; Siriani, Richard J.  
Subject: UAGPPJA MI Drafts  

If you would like to attach these bills - now that the council has officially taken up a review.
I am not sure at this time whether there will be anything to report from the committee at the next council or csp meeting - but maybe.

Nancy - if you have contact information for the person at the National Guardianship Assoc., that would be great.
2008-2009 Committee Assignments

**Internal Governance:**

Nancy L. Little, Chair  
Harold Schuitmaker, Chair-Elect  
Douglas G. Chalgian, Vice-Chair  
George W. Gregory, Secretary  
Mark K. Harder, Treasurer

**Budget:**

George W. Gregory, Chair  
Nancy L. Little  
Mark Harder

**Bylaws:**

Marilyn A. Lankfer, Chair  
Robert P. Tiplady

**Michael W. Irish Award:**

Brian V. Howe, Chair  
Hon. Philip Harter  
Marilyn A. Lankfer

**Long-Range Planning:**

Douglas G. Chalgian, Co-chair  
Lauren M. Underwood, Co-chair

**Nominations:**

Michael McClory, Chair  
Douglas A. Mielock  
Lauren M. Underwood

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In addition to maintaining relations with the State Bar, this committee will work with the State Bar to develop a plan for our Section on the following issues: (1) civic education, (2) marketing/press releases, (3) working with the State Bar on its new initiative to publicize the good deeds of lawyers to the general public.

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Michael J. McClory  
Amy Morrissey  
Derek A. Walters
Annual September Meeting:
Harold Schultmaker, Chair

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Amicus Curiae:
Ellen Sugrue-Hyman, Chair
Melisa M. W. Mysliwiec
Derek A. Walters

Continuing Education and Annual Probate Seminar:
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PROFESSIONALISM AND STANDARDS

Ethics:
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Sanford J. Mall
Deb Mitton
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  Harold Schuitmaker

Liaison to the State Bar:
  Richard J. Siriani

Law School Liaison:
  William J. Ard
**Expense Voucher**

Payee's Name  

Address  

Submitted by (if different from payee)  

WHERE REQUIRED, RECEIPTS MUST BE STAPLED TO BACK OF FORM  

See General Policies/Procedures Printed on Reverse

<table>
<thead>
<tr>
<th>Date</th>
<th>Description &amp; Purpose (For mileage note starting point and destination)</th>
<th>Mileage</th>
<th>Other Travel</th>
<th>Lodging</th>
<th>Meals (List individuals including if more than self)</th>
<th>Copying</th>
<th>Phone</th>
<th>Miscellaneous (Specify)</th>
<th>Total</th>
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</tr>
</tbody>
</table>

I hereby certify that the foregoing expense was actually incurred in conjunction with my duties for the State Bar of Michigan as ___________________________. Dated ________________, 20__.

GRAND TOTAL

Approved by ___________________________  

Title ___________________________  

Signature ___________________________  

*rev'd 12-5-05*
REIMBURSEMENT POLICIES/PROCEDURES

GENERAL POLICIES
1. Requests for reimbursement of individual expenses should be submitted as soon as possible following the event and in no event later than two weeks following the close of the fiscal year in which the expense is incurred so that the books for that year can be closed and audited.

2. All out of pocket expenses must be itemized.

3. Detailed receipts are recommended for all expenses but required for expenses over $25.

4. Meal receipts for more than one person must indicate names of all those in attendance unless the function is a section council meeting where the minutes of that meeting indicate the names of those present. Seminar meal functions should indicate the number guaranteed and those in attendance, if different.

5. Spouse expenses are generally not reimbursable.

6. Mileage is reimbursed at the current IRS approved rate for business mileage. Reimbursement of mileage or travel expenses is limited to actual distance traveled; not distance from domicile to the meeting site.

7. Receipts for lodging expenses must be supported by a copy of the itemized bill showing the per night charge, meal expenses and all other charges, not simply a credit card receipt, for the total paid.

8. Airline tickets should be purchased as far in advance as possible to take advantage of any cost saving plans available.
   A. Tickets should be at the best rate available for as direct a path as possible.
   B. First class tickets will not be reimbursed in full but will only be reimbursed up to the amount of the best or average coach class ticket available for that trip.
   C. Increased costs incurred due to side trips for the private benefit of the individual will be deducted.
   D. A copy of the ticket receipt showing the itinerary must be attached to the reimbursement request.

9. Reimbursement for car, bus or train will be limited to the maximum reimbursable air fare if airline service to the location is available.

10. Outside speakers should be advised in advance of the need for receipts and the above requirements.

11. Bills for copying done by a firm should include the numbers of copies made, the cost per page and general purpose (committee or section meeting notice, seminar materials, etc.).

12. Bills for reimbursement of phone expenses should be supported by copies of the actual phone bills. If that is not possible, the party called and the purpose of the call should be provided.

13. The State Bar of Michigan is Sales tax exempt. Suppliers of goods and services should be advised that the State Bar of Michigan is the purchaser and that tax should not be charged.

14. Registration fees and refund checks should be made payable to the State Bar of Michigan and forwarded directly to the State Bar for depositing. Checks and money orders should not be deposited to a firm account and thereafter submitted by firm check to the State Bar. Cash tendered must be deposited and a check for the full amount sent to the State Bar of Michigan.

15. Reimbursement will in all instances be limited to reasonable and necessary expenses.

SPECIFIC POLICIES—SECTIONS
1. Sections may not exceed their fund balance in any year without express authorization of the Board of Commissioners.

2. Individuals seeking reimbursement for expenditures of funds must have their request approved by the chairperson or treasurer. Chairpersons must have their expenses approved by the treasurer and vice versa.

3. Checks or money orders tendered for payment must be forwarded to the SBM and made payable to the SBM. They should not be deposited to a firm account and then paid over to the SBM. Cash tendered must be deposited and a check for the full amount forwarded to the SBM.

4. Requests for reimbursement of expenses which require council approval must be accompanied by a copy of the minutes of the meeting showing approval granted.
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Updated 12/10/2008
December 2008

Agreement for the Michigan Trust Code (MTC) and Future EPIC Commentaries – Draft of Proposed Terms

Summary

These terms follow the basic model of the agreement between the Section and ICLE for the EPIC Commentary. They propose an agreement that extends for 3 years from the time the MTC is effective. It is anticipated that the agreement will then be renewed.

ICLE will be the exclusive publisher of the MTC Commentary, but the Section and the authors will share ownership of the copyright. The Commentary will be published as part of the EPIC Paperback and the Probate Sourcebook. Mark Harder and John Martin will be credited for their authorship of the various commentaries.

ICLE will pay the Section royalties in a manner similar to that used for the EPIC Commentary. There will be a guaranteed minimum royalty payment of $15,000 for sales in the first year after the MTC is effective, and $5,000 for the succeeding years of the contract. The royalties will be paid on sales of print books, online book sales of the Sourcebook, and the proportional usage of the Sourcebook within the Online Library collection (excluding sales of subscription supplements and online book renewals after the first year).

Major terms

1. Parties -- Mark Harder, John Martin, Probate Section Council, ICLE

2. Term -- Effective when signed; runs until 3 years after the date the MTC becomes effective. It is anticipated that it will be renewed thereafter, but the parties agree to discuss. If the MTC is not enacted by December 31, 2012, either the Section or ICLE may cancel with notice to the others. Mark Harder and John Martin can step out of the agreement with notice, but the Section and ICLE will cooperate to replace them.

3. Enactment of the MTC--It is anticipated that the MTC will be enacted during 2009 with an effective date of April 1, 2010.

4. MTC Commentary
   A. Mark Harder will be the author of the MTC Commentary
   B. Mark Harder will provide ICLE with a complete manuscript for the MTC commentary in a form and quantity similar to that provided by John Martin for the EPIC Commentary. ICLE and Mark Harder will agree on a schedule that will permit ICLE to publish the Commentary at least 2 months before the scheduled effective date of the MTC.
C. On any publication of the MTC Commentary, Mark Harder will be credited as “Reporter for the MTC Drafting Committee, Probate and Estate Planning Section, State Bar of Michigan.”

D. Each year while this agreement is in force, Mark Harder will review and update the MTC Commentary on a schedule to be agreed with ICLE.

5. Commentary for the non-MTC sections of EPIC (“EPIC Commentary”)
   A. John Martin is the author of the EPIC Commentary
   B. It is anticipated that John Martin will continue to provide annual updating and review of the commentary for the non-MTC sections of EPIC through the year in which the MTC is enacted. If enactment of the MTC is delayed or Mr. Martin elects not to continue, Mark Harder will take over this review and updating. In that case, the commentary authors will be credited as “John Martin and Mark Harder, Reporters for the EPIC and MTC Drafting Committees, Probate and Estate Planning Section, State Bar of Michigan.”

6. Copyright and license
   A. Each Author jointly holds copyright with the Council in any Commentary authored by him. ICLE will register the copyrights.
   B. Each Author and the Council grants ICLE an exclusive, irrevocable, worldwide license to publish, reproduce in copies, distribute copies, display and create derivative works based on the Commentaries (which includes publication in all media).
   C. [This was the language from the EPIC Commentary agreement] Authors and the Council retain a nonexclusive license to publish and distribute limited portions of the Commentary in connection with client development activities and Council pamphlets subject to an obligation to notify ICLE of such publication and to credit ICLE as the exclusive publisher of the complete Commentary.

7. Noncompete – Authors and the Council will refrain from editing, preparing or publishing any similar work which may interfere with sales of ICLE publications containing the Commentaries.

8. Royalties before publication of the MTC Commentary. On sales of the following books that do not include the MTC Commentary, ICLE will pay the following royalties:
   A. 10% of amounts received on sales to new purchasers of the EPIC Paperback.
   B. 5% of amounts received on sales to new purchasers of the Probate Sourcebook (print or online editions), as well of 5% of amounts received (from new sales and renewals) on account of usage of the Probate Sourcebook as part of the Online Library (usage of this online book as a percentage of total usage of the Library during the royalty period).
   C. No royalties will be paid on sales of sales of print supplements to the Probate Sourcebook, renewals of online subscriptions to that book, and new editions of the EPIC Paperback sold to prior owners at a discount.
D. Provided, that ICLE guarantees at least $2,500 per year in royalties.
E. ICLE will pay royalties directly to the Section and John Martin in the percentages specified in this agreement. ICLE will provide a summary of sales, royalties and the amounts paid to the Section and Mr. Martin.

9. Royalties after publication of the MTC Commentary. Starting with the publication of the MTC Commentary, ICLE will pay the following royalties:
A. 15% of amounts received on sales to new purchasers of the EPIC Paperback.
B. 10% of amounts received on sales to new purchasers of the Probate Sourcebook (print or online editions), as well of 10% of amounts received (from new sales and renewals) on account of usage of the Probate Sourcebook as part of the Online Library.
C. For sales during the first 12 months after publication of the MTC Commentary, royalties will also be paid on sales of print supplements to the Probate Sourcebook, renewals of online subscriptions to that book, and new editions of the EPIC Paperback sold to prior owners at a discount. After the first 12 months, no royalties will be paid on these sales, but only on the other sales listed above.
D. Provided, that ICLE guarantees a royalty payment of at least $15,000 for the first year after publication of the MTC Commentary, and $5,000 per year thereafter.
E. These royalties are the entire royalties to be paid and supersede any obligations under section 8 above.
F. ICLE will pay royalties directly to the Section and the Authors in the percentages specified in this agreement. ICLE will provide a summary of sales, royalties and the amounts paid to the Section and Mr. Martin.

10. ICLE will edit, cite-check, and will publish the Commentary, and use best efforts to market these publications. ICLE commits to publish the Commentary in the EPIC Paperback and the Probate Sourcebook during the term of this Agreement. The Paperback is published in print. The Sourcebook will be published in print as well as online for at least the first year after enactment of the MTC, and will be published online during the term of this agreement.
PROPOSED ADDITION TO MICHIGAN TRUST CODE

December 13, 2008

In the course of reviewing the bluebacks of the Michigan Trust Code, the Michigan Trust Committee noted that a provision had not been included to give the courts jurisdiction over trust protectors. The Committee approved adding a new subsection to Section 7809 of the Code, which will state as follows:

(6) By accepting an appointment to serve as a trust protector of a trust registered in this state or having its principal place of administration in this state, the trust protector submits to the jurisdiction of the courts of this state even if investment advisory agreements or other related agreements provide otherwise, and the trust protector may be made a party to any action or proceeding relating to a decision, action, or inaction of the trust protector.

The Committee seeks Council endorsement and approval of this change.
Power of Attorney Act Committee
Report to Probate Council
December 2008
Submitted by: Daniel P. Marsh, Chairman

Mission of the committee: Examine current Michigan law concerning Financial Powers of Attorney and suggest improvements to the existing statute in light of the model UPOAA.

ABA/AARP Report says Uniform Power of Attorney Act keeps seniors safe from abuse and allows them to plan for the future

A recent AARP Report explores the problem of power of attorney abuse and how state legislatures can protect vulnerable adults. The report shows that a large majority of states lack protections against abuse. The report advocates The Uniform Power of Attorney Act (UPOAA), a model law, that is said to lay the groundwork for keeping seniors safe from abuse, while allowing them to plan for the future. See Power of Attorney Abuse: What States Can Do About It, Naomi Karp, J.D., AARP Public Policy Institute (a report compiled by the American Bar Association Commission on Law and Aging under contract to AARP), December 2008, (88 pages).

For an Issue Brief on the AARP report and a link to the report's 89-page full text:
http://www.aarp.org/research/legal/legalrights/inb164_poa.html

For a USA Today article on the report:
http://www.usatoday.com/printicedition/moreay/20081204/elderabuse04_st_art.htm?lpc=intersstitial

For more on powers of attorney:
http://www.elderlawanswers.com/elder_info/elder_article.asp?id=703#1

Request to Committee Members/Failure in Michigan Statute

A request has been made to committee members for their response to the committee mission. Some thoughts on the failure in Michigan statute were provided to committee members:

1) The scope of powers in statute fails to enumerate powers of an agent. This creates a greater likelihood for selective interpretation and increases opportunity for denial by third parties.
2) The rules applicable to determining the matters which can or cannot be delegated are not well developed.

3) Michigan statute does not contain restrictions on the subject matter suitable for delegation under a Durable Power of Attorney.

4) The agent’s authority is limited by agency law. A principal has very little limitation on what powers may be delegated to an agent to act on behalf of the principal.

Committee Member Contact List attached.
Probate and Estate Planning Section
Power of Attorney Subcommittee Roster
2008/2009

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Website: www.fosterswift.com
The Michigan Probate Judges Association’s Board of Directors met on December 5, 2008 to consider the findings and recommendations of the MPJA Ad Hoc Committee of the Michigan Trust Code.

The MPJA Board of Directors agreed to support the MTC as ratified by the Probate and Estate Planning Council if the following amendments were made to the proposed legislation:

1. **Section 108 Principal Place of Administration**

   This section is fully rejected. MCLA 700.7305 shall remain in full force and effect.

2. **Section 110(3) Qualified Beneficiaries**

   Replace section 110 (3) with the following: The Attorney General of the State of Michigan has the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in this State.

3. **Section 111 Non Judicial Settlements.**

   Court approval shall be required for the termination of any trust with a value of $50,000 or more; Court approval shall be required for any modification or termination of any trust involving a minor or incapacitated beneficiary; The Attorney General shall receive notice for the modification or termination of any trust whose purpose, in whole or in part, is charitable.

4. **Section 601 Capacity of Settlor.**

   The capacity to make or amend a revocable trust remains a contract standard (and not lowered to a will standard).

5. **Section 604 Limitation on Action**

   Limitation of 1 (one) year after service by the trustee and require the trustee to serve the trust instrument on the beneficiary/contestant; Require that the notice served by the trustee inform the beneficiary/contestant that the judicial proceeding must be commenced within 63 days.

6. **Section 809 Trust protectors.**

   The section is amended to read: A trust protector is a fiduciary and is liable for any loss that results from a breach of fiduciary duty.
7. Section 1004 Attorney Fees

Remove the word "dispute" in section 1004 (2)
Replace section 1004 (3) with: A trustee's claim for costs or compensation may be reduced or denied for a breach of trust.

In addition:

8. The MPJA Board of Directors authorizes Judge David M. Murkowski and Judge Milton L. Mack Jr. to present these proposed amendments to the Probate and Estate Planning Council and the Michigan Bankers Association and any other interested party.
A bill to amend 2008 PA 146, entitled
"Personal property trust perpetuities act."
by amending section 4 (MCL 554.94).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 4. (1) This act applies only to a nonvested interest in,
or power of appointment over, personal property held in a trust
that is either revocable on, or created after, the effective date
of this act AND ONLY TO THE EXTENT THAT THE TRUST IS NOT A SPECIAL
APPOINTEE TRUST.

(2) FOR PURPOSES OF THIS SECTION, A TRUST IS A SPECIAL
APPOINTEE TRUST TO THE EXTENT IT WAS CREATED OR ADDED TO BY THE
EXERCISE OF A NONGENERAL POWER OF APPOINTMENT UNDER A TRUST THAT
WAS IRREVOCABLE ON SEPTEMBER 25, 1985.
George W. Gregory

From: Constance Brigman [conniebrigman@gmail.com]
Sent: 12/12/2008 11:29 AM
To: gggregory@gggregoryonline.com
Cc: nancy.little@fosterzack.com
Subject: No report for Guardianship and Conservatorship Committee for Dec. 13th meeting of Probate Council

Dec. 12, 2008

Good morning,

I will not be able to attend tomorrow's meeting. I do not have a committee report. I regret to inform you that the persons assigned to my committee have yet to respond to my attempt to discuss the UAGPPJA with them via email.

Please note that the email address given in the print version of the Michigan Bar Journal is incorrect. Either of the email addresses contained in my signature block below will suffice.

Thank you,
Constance L. Brigman
connie@brigmanlaw.com
conniebrigman@gmail.com

12/12/08
## Amended Annual Budget Actual Variance

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Beginning Fund Balance $17,774.39
Increase in Fund Balance $44,526.07
Ending Fund Balance $62,300.46

HD88796-1
12/13/2008
### Probate and Estate Planning Section

**Treasurer's Report as of November 30, 2008**

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<td>Lobbying</td>
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<td>5,859</td>
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<td>Strategic Planning</td>
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<td>Publishing Agreements</td>
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<td>820</td>
<td>-</td>
<td>820</td>
<td>(820)</td>
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<td>Support for Annual Institute</td>
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<td>Amicus Briefs</td>
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<td>Other</td>
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<td>282</td>
<td>1,000</td>
<td>282</td>
<td>718</td>
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<tr>
<td><strong>Total Disbursements</strong></td>
<td>113,150</td>
<td>-</td>
<td>4,081</td>
<td>-</td>
<td>105,330</td>
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<td>Increase</td>
<td>6,850</td>
<td>-</td>
<td>109,006</td>
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<td>98,147</td>
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</table>

**Additional Information**

Projected Fund Balance Calculation

- Fund Balance per State Bar as of November 30, 2008: $171,306
- Revenue Received after November 30, 2008: $-
- Approved Expenditures after November 30, 2008: $3,739
- Projected Fund Balance as of December 13, 2008: $167,567

*Based on preliminary statements from State Bar

HD89641-1
12/13/2008
A bill to amend 2008 PA 148, entitled
"Personal property trust perpetuities act,"
by amending section 4 (MCL 554.94).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 4. (1) This act applies only to a nonvested interest in,
or power of appointment over, personal property held in a trust
that is either revocable on, or created after, the effective date
of this act AND ONLY TO THE EXTENT THAT THE TRUST IS NOT A SPECIAL
APPOINTEE TRUST.

(2) FOR PURPOSES OF THIS SECTION, A TRUST IS A SPECIAL
APPOINTEE TRUST TO THE EXTENT IT WAS CREATED OR ADDED TO BY THE
EXERCISE OF A NONGENERAL POWER OF APPOINTMENT UNDER A TRUST THAT
WAS IRREVOCABLE ON SEPTEMBER 25, 1985.
A bill to amend 1988 PA 418, entitled
"Uniform statutory rule against perpetuities,"
by amending section 5 (MCL 554.75), as amended by 2008 PA 149.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 5. (1) Section 2 does not apply to any of the following:
(a) A nonvested property interest or a power of appointment
arising out of a nonnontative transfer, except a nonvested property
interest or a power of appointment arising out of a premarital or
postmarital agreement; a separation or divorce settlement; a
spouse's election; a similar arrangement arising out of a
prospective, existing, or previous marital relationship between the
parties; a contract to make or not to revoke a will or trust; a
contract to exercise or not to exercise a power of appointment; a
transfer in satisfaction of a duty of support; or a reciprocal
transfer.

(b) A fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income.

c) A power to appoint a fiduciary.

d) A discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal.

e) A property interest, power of appointment, or any other arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute.

(f) Except as provided in subsection (2), an interest in, or power of appointment over, personal property held in a trust that is either revocable on or created after the effective date of TO WHICH the personal property trust perpetuities act, 2008 PA 148, MCL 554.91 TO 554.94, APPLIES.

(2) Section 2 is applicable to an interest in or power of appointment over TO WHICH THE personal property held in trust PERPETUITIES ACT, 2008 PA 148, MCL 554.91 TO 554.94, APPLIES if the interest or power was created, or property was made subject to the interest or power, by the exercise of a second power. If section 2 is applicable to an interest or power under this subsection, it applies only to the extent of the exercise of the second power, and instead of using a period of 90 years to determine whether section 2(1)(b), (2)(b), or (3)(b) is satisfied, or whether to reform a disposition under section 4, a period of 360 years shall be used.
(3) As used in this section, "second power" means that term as defined in section 2 of the personal property trust perpetuities act, 2008 PA 148, MCL 554.92.
At the December 13, 2008 meeting of the Probate and Estate Planning Section, attendees were informed about House Bill 6539 and House Bill 6540, currently scheduled for a hearing and vote before the end of the legislative session.

The Committee supported a motion to support parody between personal and real property in the exemption from the statutory rule against perpetuities. The effect of the motion is support for HB 6539 and 6540.

PA 148 (2008) created the Personal Property Trust Perpetuities Act and PA 149 (2008) 4602 amended the Uniform Statutory Rule Against Perpetuities to exempt personal property from the rule against perpetuities under certain conditions. The rule against perpetuities (RAP) prevents people from tying up assets in trusts that can go on forever. A perpetual trust (or dynasty trust, as it is called) is a technique that allows the creator of the trust to pass wealth from generation to generation without incurring transfer taxes such as the federal generation-skipping transfer tax. The changes made by PA 148 and 149 allowed for the creation of perpetual trusts involving personal property; placing real property in perpetual trusts is still prohibited. HB 6539 and 6540 seek to amend those Public Acts to, in effect, allow **real property** in perpetual trusts if certain conditions were met.

Attorney James P. Spica, Senior Counsel at Warner Norcross & Judd LLP in Southfield, Michigan is scheduled to speak at an upcoming hearing on the matter. His contact information:

Phone: (248) 784-5137     Fax: (248) 603-9737
E-mail: jspica@wnj.com     Web: www.wnj.com

Attached to this report are the relevant Public Acts and Committee legislative Service Bureau Reports.

To maintain communications between the Real Property Section and the Probate and Estate Planning Sections of the State Bar of Michigan which may be of mutual interest or relevance and, when appropriate, support concerted action and cooperation.