

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

December 17, 2011  
University Club  
Lansing, Michigan

**Minutes**

**1. Call to Order**

The Chair of the Section, George Gregory called the meeting to order at 10:26 a.m.

**2. Attendance**

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

George Gregory, Chair	Meg Lentz
Mark Harder, Chair Elect	Hon. Darlene O'Brien
Tom Sweeney, Vice Chair	Pat Ouellette
Amy Morrissey, Secretary	Jim Spica
Shaheen Imami, Treasurer	Jim Steward
Susan Allan	Ellen Sugrue-Hyman
Josh Ard	Marlaine Teahan
Chris Ballard	Rob Tiplady
George Bearup	Nancy Welber
Constance Brigman	
David Kerr	

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

Hon. David Murkowski	Robert Taylor
Rebecca Schnelz	

**C.** The following officers and members were absent without excuse:

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

Douglas Chalgian	Douglas Mielock
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**E. Others in Attendance**

W. Jerry Byrd	David P. Lucas
Rebecca Bechler	Michael Lichterman
Brittany Catterick	Katie Lynwood
Lynn Chard	Rick Mills
Daniel Cogan	Jeanne Murphy
Keven DuComb	Lorraine New
Kathleen Goetsch	Neal Nusholtz
Jill Goodell	Amy Tripp
Steve Jones	

**3. Internal Governance**

**A. Minutes of November 12, 2011 Meeting of the Council**

Minutes of the November 12, 2011, meeting of the Council had been previously distributed for the meeting. Upon motion by Mark Harder with support from Shaheen Imami, the minutes were approved by a unanimous vote of all Council members present.

**B. Treasurer Report – No report.**

**C. Chairperson’s Report**

George Gregory introduced special guests: Janet Welch, Executive Director of the State Bar of Michigan (SBM) and Lynn Chard, Executive Director of ICLE.

Mr. Gregory reported that last month, the President of the SBM asked him to spend five minutes of his time explaining our Section activities, and he did so. Some of the activities surprised the SBM, in particular our Agreement with ICLE for Development of Online Member Resources (which Mr. Gregory provided to the SBM). The SBM wanted to become a little more involved with our Section and asked for five minutes of our time, so Mr. Gregory granted that request.

Mr. Gregory stated that the thoughts of our guests are invited in our conversations, especially our special guests when we talk about social media policy and our ever-evolving arrangements with ICLE.

**D. Standing Committee Reports**

**1. Annual Meeting**

Mark Harder reported that he received an email from the State Bar of Michigan about the opportunity to be a part of the September SBM meeting. The Section has decided for the present time to hold its annual meeting separate from the SBM meeting.

2. Committee on Special Projects (CSP)

Jim Steward made a motion to approve the language of revised MCL 700.5314 as presented to the Council by the Guardianship and Conservatorship Committee, but including additional changes discussed at the CSP meeting (regarding “make, sign or revoke” any authorization) coupled with the authority in the Guardianship and Conservatorship Committee to make non-substantive changes to the wording. Motion was supported by Meg Lentz. A hand vote of Council members present was taken: 20 in support; 0 opposed, 0 abstaining, 3 absent. (See approved language in Attachment 1 to minutes.)

Next, Mr. Steward moved to approve changes to the DNR Procedures Act (MCL 333.1052 et. seq.) as presented to the Council, but with the following revisions to original form(s): 1) need a statement on the forms as to who is excluded from serving as a witness, 2) need a statement on the declarant form identifying that the declarant is signing the form for spiritual reasons, and 3) remove the patient representative block. Pat Ouellette supported the motion. A hand vote of Council members present was taken: 20 in support, 0 opposed 0 abstaining, 3 absent. (See approved language in Attachment 2 to minutes.)

Mr. Steward reported that the peace of mind registry was discussed at CSP but not enough information was available at the meeting to form an opinion.

3. Amicus Curiae

Ellen Sugrue-Hyman reported that the Amicus Committee reviewed the standards for publication of court opinions set forth in MCR 7.215. The Committee suggested the possibility of seeking to amend MCR 7.215 to address the circumstances in which a section of the SBM may request publication of an opinion and to establish a suitable time frame for such requests. There was discussion concerning how the Court of Appeals is applying the standard set forth in MCR 7.215. Mr. Gregory, the Chair, requested that the Court Rules Committee explore possible changes to MCR 7.215.

4. Probate Institute

Tom Sweeney reported that the schedule for the Institute is set. Carlyn McCaffrey is the national speaker. Lynn Chard mentioned that there were 33 registrants on the first day of registration for the Institute.

5. Pamphlets

Ellen Sugrue-Hyman reported that the SBM has requested updates to our Section pamphlets and the Pamphlet Committee is working on revising the Section pamphlets by January 30, 2012. Drafts should be ready for inclusion in the materials for the January meeting.

## 6. Section Journal

Nancy Little reported that the current Journal issue should be ready for dissemination by the middle of next week. Candace Crowley commented on the ongoing debate between paper and electronic publications; the debate is very polarized. She noted that within a few months, members should have access to the member portal on the SBM website where they can choose whether to receive the Journal in either electronic or paper format. Ms. Crowley also notes that our Section can request to place archived Journal issues behind a firewall. Mr. Gregory, Chair, made the request at the meeting that this occur and that members are required to get a password to access archive Journal issues.

## 7. ListServ/Electronic Communication/Technology

Josh Ard led discussion about the meeting materials. Materials that are late for inclusion in the meeting packet can be sent to the announce list via email with attachments or a link if Sandi Barger can get materials in link form in time. A meeting reminder should be sent by the Secretary on the Friday immediately preceding the Council meeting with the additional materials. The supplemental materials should be made available via the announce list with PDF materials attached. Every Section member who has provided an email to the SBM is supposed to be on the announce list.

It was agreed that persons not on Council (except ex-officio) should not be on the Section Council email list.

Ms. Crowley noted that the SBM has a portal system for its staff and committees to access materials; it took three years to build, but is operating effectively for committees. Presently, the SBM does not have the capacity to allow the Sections to use this portal. However, it has identified a vendor who can help Sections adapt this type of portal for Section purposes (a long-term project). In short term, the SBM staff is available until Friday at 5 p.m. to help disseminate materials.

Ms. Crowley and Janet Welch led discussion regarding the SBM Social Media Policy, which was circulated prior to the meeting in draft form. The policy is being developed because it is best practice to have policy. SBM sections are using facebook, twitter, and other social networking sites. Listserves are being added to the policy. Samantha Meinke on the SBM staff is an expert in social media. One SBM section has migrated to Linkdin as an alternative to a listserve. Sections are using their own logos. Ms. Crowley reviewed the Guidelines in the policy. Josh Ard notes that we are generally in compliance. Sections are able to create their own more restrictive policies.

Mark Harder had the following comments on the draft Social Media Policy: the standard for bad judgment is ambiguous yet subject to discipline; the guidelines should be published separately from policy itself; the duty to correct an error is a little burdensome; the contact name of SBM point person can be removed from

the policy since this person may change. Rob Tiplady commented on item #2 of page 2 of the draft which states that “you are responsible” for information posted. Mr. Tiplady suggested that this could be changed to state “you may be responsible.” A suggestion was also made that the policy might want to state that postings do not reflect policy of the SBM. Our Section list does not have a moderator; we have an administrator.

#### 8. Ethics

David Kerr reported that the Supreme Court will not pursue changes to MCR 7.3 (ADM 2002-24); the Order was dismissed.

#### 9. Unauthorized Practice and Multidisciplinary Practice

Marlaine Teahan reported that the UPL Committee is working with Legislation Committee to approach UPL from a consumer protection perspective. Ms. Welch reported that UPL enforcement is not so much a matter of energy, but where to commit the financial resources; other state bars are spending money with no result. She notes that relief is sometimes granted by a court, and then the defendant alters the services provided. The SBM is focusing efforts on prevention of UPL-related problems through public awareness, using media to promote the idea that “a lawyer helps.”

#### 10. Court Rules, Procedures and Forms

Marlaine Teahan reported that a letter was sent to the Supreme Court regarding the MCR 5.801 and MCR 7.101 changes the Council voted on at the November meeting. Two days after the letter was sent, the Supreme Court amended some of the rules. All of the changes are now found in MCR 7.100. Supreme Court Administrators Office (SCAO) will schedule these changes for hearing January.

Our Section offered its services to SCAO regarding court administration procedure issues, but they are looking at general issues and issues concerning specific courts.

Ms. Teahan’s December 5, 2011, memorandum is included with the meeting materials (Attachment 4). See the first page of the December memo for SCAO recent changes. Also see the link at end of memo for a complete list of the changes and explanation.

### **D. Ad Hoc Committees**

#### 1. Decanting

Jim Spica reported that there will be decanting legislation introduced in or about February 2012 sponsored by Sen. Schuitmaker. The Decanting Committee will bring materials for the draft legislation to the CSP next meeting. This issue needs to be coordinated with asset protection statute.

2. Transfer Tax

Lorraine New reported that there is a new draft IRS Form 709 out. See December 2011 tax nugget (Attachment 6).

3. Guardianships, Conservatorships and End of Life

Connie Brigman reported that only one of the Council's suggestions regarding POLST form made it into the form, that being that the POLST can be revoked will be stated on the form.

4. Estate Recovery from a Probate & Estate Planning Perspective

Shaheen Imami reported on committee activities. It was suggested that we need to separate policy from technical issues to address issues effectively.

**E. Specialty Areas and Liaisons**

1. ICLE

Jeanne Murphy reported that ICLE is moving forward with website

2. Probate Judges' Association Liaisons

Hon. Darlene O'Brien reported. In reference to the Judicial Resources Recommendations (JRR), there are a number of bills going through legislature; several judgeships will be lost.

3. Tax Section Liaison

Tom Sweeney reported that HB 5237 was introduced on Dec. 15, 2011 concerning the construction of certain instruments for Federal estate tax purposes.

4. Liaison to SCAO Forms Committee

Marlaine Teahan reported that SCAO is reorganizing committees and is looking for volunteers.

**F. Adjournment**

There being no other business brought before the Council, Mark Harder moved to adjourn; Meg Lentz supported. The meeting was adjourned at 12:08 p.m.

Respectfully submitted,

Amy Morrissey  
Secretary