

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

**December 17, 2016  
Lansing, Michigan**

**Minutes**

**I. Call to Order**

The Chair of the Section, James Steward, called the meeting to order at 10:04 am.

**II. Attendance**

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

James B. Steward  
Marlaine C. Teahan  
Marguerite Munson Lentz  
Christopher A. Ballard  
David P. Lucas  
Rhonda M. Clark-Kreuer  
Kathleen M. Goetsch  
Mark E. Kellogg  
Robert B. Labe  
Katie Lynwood  
Melisa M.W. Mysliwicz  
Nazeen H. Syed  
Geoffrey R. Vernon  
Nancy H. Welber

A total of 14 council members and officers were present, representing a quorum.

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

George F. Bearup  
Christopher J. Caldwell  
Hon. Michael L. Jaconette  
Michael G. Lichterman  
Raj A. Malviya  
Richard C. Mills  
Lorraine F. New  
Nathan R. Piwowarski  
David L.J.M. Skidmore

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

None.

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

None.

E. **Others in attendance:**

Susan Chalgian

Daniel Hilker

Ryan Mills

Ken Seavoy

III. **Minutes of the November 5, 2016 Meeting of the Council**

The minutes of the November 5, 2016, meeting of the Council were attached to the combined Agenda for this meeting posted on the Section's web page prior to the meeting. Ms. Goetsch moved that the minutes be approved. The motion was seconded. The motion was approved on a voice-vote with no nays and no abstentions.

IV. **Treasurer's Report – David P. Lucas**

Mr. Lucas's Treasurer's Report was attached to the combined Agenda. The reimbursement rate will be decreasing to 53.5 cents per mile. The Bar is emphasizing the need to submit reimbursement requests on a timely basis.

V. **Chairperson's Report – James Steward**

- Mr. Steward included a written report with the materials.
- SB 270 was passed, dealing with changes to jurisdiction for guardianship proceedings. Mr. Steward expressed concerns about the legislation and whether all of the consequences were considered before passage.
- *Estate of Attia* was recently decided in the Michigan Court of Appeals, holding that an unsigned will can be admitted to probate in some circumstances – a committee will be looking at this case to decide whether to propose a statutory change
- Domestic asset protection trust legislation passed
- POST legislation doesn't look like it will pass this year. Will likely be reintroduced next year.
- The Bar is forming a committee to review the civil discovery rules. Mr. Steward is asking for volunteers who would like to serve on the committee.
- Uniform Voidable Transactions Act (SB 982). This went through the lame duck session very quickly and unexpectedly. The Legislative Analysis Committee is taking a look at whether technical amendments could be made to address some of the committee's concerns.

- The State Bar will no longer automatically distribute the 600 page member listing portion of the directory to State Bar member attorneys as it has in the past. Instead of the printed full member directory, a new, but more limited, print directory will be sent to all members (except those who opt out). This new print directory will contain all the information in the current directory regarding the courts, Michigan state and local government, advertising, and lawyer association listings, but it will not contain the contact information of Bar members. Print copies of the member listings will be available for purchase for \$35, but those print copies must be “pre-ordered” by February 15th.
- Michigan Court of Appeals decisions will now be issued with electronic notifications to the parties. This will replace the mailing of printed copies of the opinions.

VI. **Report of the Committee on Special Projects –**

Mr. Vernon reported that the EPIC update projects are proceeding. He is expecting that some of them will come before the committee next month.

VII. **Standing Committee Reports**

A. **Internal Governance**

1. Budget – Christopher A. Ballard—no report
2. Bylaws –

Ms. Welber addressed the provision in the bylaws regarding publications by the Section. State Bar currently has control over all publications. It might be worth looking at changing this so the section can have more autonomy (e.g. for printing brochures).

3. Awards – Amy N. Morrissey—no report.
4. Planning – Marlaine C. Teahan—no report.
5. Nominating – Thomas W. Sweeney—no report.
6. Annual Meeting – Marlaine C. Teahan—no report.

B. **Legislation and Lobbying**

1. Legislative Analysis and Monitoring Committee

Mr. Hilker presented a summary of the provisions of (SB0982), which for the most part enacts the Uniform Voidable Transactions Act, which in turn is essentially a series of amendments to the Uniform Fraudulent Transfers Act (MCL 566.3 et seq). This legislation was taken up unexpectedly in the lame duck session, and passed without the opportunity for input from the committee. There

are issues with the provisions of the bill. The committee would like to provide comments and possible corrections for introduction next year, particularly for coordination with the Qualified Dispositions in Trusts Act (PA 330 & 331 of 2016; formerly SB 597 & HB 5504).

2. Legislation Development & Drafting Committee

Mr. Vernon reported that the repeal of dower has passed, and is awaiting the governor's signature.

The *Jejuga* fix bill did not make it through the legislature.

EPIC updates topics list. The committee has decided that it will not pursue the proposed changes to section 7812 that would permit persons other than the trustee to pursue a claim. The other items on the list have been assigned and proposals will be forthcoming.

3. Insurance Legislation Ad Hoc Committee

Mr. Vernon reported that SB 1010 died. The committee will try to get it reintroduced in the next session. They are trying find out what the objections are from the insurance lobby.

4. Assisted Reproductive Technology Ad Hoc Committee

Ms. Welber reported that the committee will be discussing the proposed legislation with Right to Life, to make sure there will not be any issues going forward. Initial indications are that they will support the legislation.

**C. Education and Advocacy Services for Section Members**

1. Amicus Curiae –

Ms. Syed reported that a funding request was submitted to the committee regarding litigation over estate recovery. This was not a request for an amicus brief. Attorney is requesting \$2,500 to fund the attorney's preparation for oral argument. Committee recommends that council deny the funding request (this is a request for funding of private litigation, where the section would not have an interest, not a request for the section to take a position on the issue).

Ms. Syed moved on behalf of the committee to adopt the committee's recommendation and deny the funding request. The motion was seconded. The motion passed on a voice vote with no nays and no abstentions.

2. Probate Institute

Ms. Lentz distributed a preliminary agenda. Dates will be May 18-20 (Acme) and June 16-17 (Plymouth). Registration is now open.

3. State Bar and Section Journals – Richard C. Mills – no report

4. Citizens Outreach –

Ms. Mysliwicz included a report as an attachment to the agenda. There are still brochures available, which the committee members will try to sell at upcoming ICLE events. Online versions of the brochures will be available soon. The committee was been working out the details of a publishing agreement with the State Bar.

Ms. Mysliwicz made a motion to approve the proposed publishing agreement with the State Bar as attached to the Committee's report to Council and authorize Mr. Steward to sign the agreement on behalf of the Section. The motion was seconded. The motion passed on a voice vote with no nays and no abstentions.

5. Electronic Communications – Michael G. Lichterman—no report.

6. Membership –

Mr. Viviano presented a report regarding current section membership demographics. The committee has been visiting law schools, but doesn't feel that doing so has been particularly beneficial to the section. The committee will still be having a presence at ICLE presentations.

**D. Ethics and Professional Standards**

1. Ethics & Unauthorized Practice of Law– Katie Lynwood—no report.

**E. Administration of Justice**

1. Litigation, Proceedings, and Forms

Ms. Teahan reported on the probate appeals rules. The enacting legislation has been passed, but the bills that make the changes have differing effective dates. Now that the law is in effect, the court rules need to be changed. Draft was submitted to the Supreme Court. The Supreme Court responded with a proposal that includes some changes to the Section's proposals.

Ms. Teahan made a motion that the Section adopt a public policy position approving the memo dated October 12, 2016, which was submitted to the Supreme Court with the Section's recommended changes to the court rules. The motion passed: 14 yes, 0 no, 0 abstain.

The Supreme Court analysts have suggested some additional changes. The State Bar has asked for the Section's input. The Section will come back to this at the January meeting.

F. **Areas of Practice**

1. Real Estate –

Mr. Kellogg reported on the committee's efforts to modify HB 4645, dealing with uncapping issues and transfers to LLCs. The bill will not be passed during the current session. They will be looking at reintroducing legislation during the next session.

2. Tax Committee

Mr. Labe submitted a tax nugget discussing some of the tax proposals made by the incoming presidential administration. This was included with the agenda materials.

Ms. Welber reported on a tax proposal that would have required inherited qualified plan assets to be distributed to beneficiaries within 5 years of death. There is an ACTEC committee that is preparing an analysis that will be submitted to the Joint Committee on Taxation.

3. Charitable and Exempt Organization – Christopher J. Caldwell—no report.

4. Guardianship, Conservatorship, and End of Life Committee – Rhonda M. Clark-Kreuer—no report.

VIII. **Other Reports**

A. **Liaisons**

1. Alternative Dispute Resolution Section Liaison – Milton J. Mack, Jr. —no report.

2. Business Law Section Liaison – John R. Dresser—no report.

3. Elder Law and Disability Rights Section Liaison

Ms. Chalgian reported on the special needs fairness act. She also reported on changes to the regulations relating to restrictions on annuities.

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

5. ICLE Liaison – Jeanne Murphy—no report.

6. Law Schools Liaison – William J. Ard—no report.

7. Michigan Bankers Association Liaison – Susan M. Allan—no report.

8. Michigan Probate Judges Association Liaisons – Hon. Judge David M. Murkowski, Hon. Michael L. Jaconette—no report.

9. Probate Registers Liaison – Rebecca A. Schnelz—no report.
10. SCAO Liaisons – Constance L. Brigman, Michele C. Marquardt, Rebecca A. Schnelz—no report.
11. Solutions on Self-Help Task Force Liaison – Kathleen M. Goetsch—no report.
12. State Bar Liaison – Mr. Siriani – no report
13. Taxation Section Liaison – George W. Gregory—no report

IX. **Other Business**

X. **Hot Topics**

XI. **Adjournment**

The meeting was adjourned by Chairperson James Steward at 11:57 am.