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

December 16, 2017
Lansing, Michigan

Minutes

1. Call to Order: The Chair of the Section, Marlaine C. Teahan, called the meeting to order at 10:06 am.

2. Introduction of Guests and attendance.
   a. Meeting attendees introduced themselves
   b. The following officers and members of the Council were present:
      Marlaine C. Teahan, Chair
      Marguerite Munson Lentz, Chair Elect
      Christopher A. Ballard, Vice Chair
      David P. Lucas, Secretary
      David L.J.M. Skidmore, Treasurer
      Christopher J. Caldwell
      Rhonda M. Clark-Kreuer
      Kathleen M. Goetsch
      Nazneen Hasan
      Angela M. Hentkowski
      Mark E. Kellogg
      Michael G. Lichterman
      Katie Lynwood
      Raj A. Malviya
      Richard C. Mills
      Kurt A. Olson
      Nathan R. Piwowarski
      Geoffrey R. Vernon
      A total of 19 Council officers and members were present, constituting a quorum

3. Absences
   a. The following officers and members of the Council were absent with excuse:
      Michael L. Jaconette
      Robert B. Labe
      Melisa M. W. Mysliwiec
      Lorraine F. New
      Christine M. Savage

   b. The following officers and members of the Council were absent without excuse:
      none

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c. The following ex-officio members of the Council were present:
Robert D. Brower, Jr.

d. The following liaisons to the Council were present:
Daniel W. Borst
Jeanne Murphy
James P. Spica

e. Others present:
Aaron Bartell
Rosemary Buhl
Ellen “Molly” Burns
Daniel Hilker
Steve Jones
Andrew Marks
Ken Seavoy
Mike Shelton
Paul Vaidya

4. Minutes of November 11, 2017 Meeting of the Council: it was moved and seconded to approve the Minutes of the November 11, 2017 meeting of the Council, as included in the meeting agenda materials and presented to the meeting. On voice vote, the Chair declared the motion approved.

5. Report of the Budget Committee - David P. Lucas: On behalf of the Budget Committee, Mr. Lucas presented a proposed budget for the fiscal period October 1, 2017 through September 30, 2018, which was included in the meeting agenda materials. The Committee’s motion is:

   the Probate and Estate Planning Section adopts the October 1, 2107 through September 30, 2018 budget, in the form presented to the Council.

   Following discussion, on voice vote, the Chair declared the motion approved.

6. Chair’s Report – Marlaine C. Teahan: The Chair reviewed the Chair’s Report which was included with the meeting agenda materials. During the Chair’s Report, Mr. Spica told the Council that he had talked to Representative Lucido about legislation regarding certificates of trust existence and addressing In re Jajuga. Mr. Spica also told the Council that he had met with Representative Kesto about the Divided and Directed Trusteeship legislation, and was told that the legislation would likely take the form of three bills.

7. Presentation on SBM Connect - Andrew Marks: Mr. Marks, a representative of the State Bar of Michigan, made a presentation regarding SBM Connect, the State Bar’s online member communication internet software for lawyer discussions, announcements, events calendar, and documents library.

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8. Committee Reports

a. Guardianship, Conservatorship, and End of Life Committee - Rhonda M. Clark-Kreuer: The Chair stated that the Committee’s report would be taken out of the order as stated in the agenda. Ms. Clark-Kreuer reported the Committee’s discussion regarding proposed changes to MCR 3.903, and that the Committee recommends taking no action at this time. 

Ms. Clark-Kreuer reported the Committee’s discussion regarding HB 5075. The Committee’s motion is:

> the Probate and Estate Planning Section opposes HB 5075.

The Chair stated that, since this would be a public policy position of the Section, the vote of the Council would have to be recorded. Following discussion, the Chair called the question and the Secretary recorded the vote of 18 in favor of the motion, 0 opposed to the motion, 0 abstain, and 5 not voting. The Chair declared the motion approved.

Ms. Clark-Kreuer reported the Committee’s discussion regarding HB 5076. The Committee’s motion is:

> the Probate and Estate Planning Section opposes HB 5076.

The Chair stated that, since this would be a public policy position of the Section, the vote of the Council would have to be recorded. Following discussion, the Chair called the question and the Secretary recorded the vote of 18 in favor of the motion, 0 opposed to the motion, 0 abstain, and 5 not voting. The Chair declared the motion approved.

Ms. Clark-Kreuer reported the Committee’s discussion regarding SB 713. The Committee's motion is:

> the Probate and Estate Planning Section opposes SB 713.

The Chair stated that, since this would be a public policy position of the Section, the vote of the Council would have to be recorded. Following discussion, the Chair called the question and the Secretary recorded the vote of 17 in favor of the motion, 1 opposed to the motion, 0 abstain, and 5 not voting. The Chair declared the motion approved.

The Chair asked Ms. Clark-Kreuer to provide a summary of the Committee’s concerns and comments to the Section’s lobbyist.

b. Tax Committee - Raj Malviya: Mr. Malviya presented a 2-Part Report from the Tax Committee, dated December 16, 2017, which Report is included in the Council agenda meeting materials.

c. Amicus Curiae Committee - David L.J.M. Skidmore: Mr. Skidmore reported the Committee’s discussion regarding the Estate of James Erwin, a decision of the Michigan Court of Appeals, for which the Michigan Supreme Court has granted leave to appeal. The
The matter involves MCL 700.2801, regarding a spouse’s wilful absence. The Supreme Court has invited interested persons or groups to submit amicus briefs on two issues: (i) whether the “wilfully absent” provision in MCL 700.2801(2)(e)(i) is defined exclusively by physical separation, or whether it includes consideration of the emotional bonds and connections between spouses; and (ii) whether MCL 700.2801(2)(e)(i) requires proof that a spouse intends to abandon her or his marital rights. The Committee’s materials include a Committee report, and a minority report, both of which were included in the Council agenda meeting materials. The Committee’s motion is:

the Probate and Estate Planning Section authorizes (i) the filing with the Michigan Supreme Court of a motion requesting permission to file an *amicus curiae* brief and an *amicus curiae* brief in the *Estate of James Irwin*, taking the position that (a) the “absent” portion of the “willfully absent” provision in MCL 700.2801(2)(e)(i) is defined exclusively by physical absence; (b) the “willfully” portion of the “willfully absent” provision in MCL 700.2801(2)(e)(i) permits consideration of mental and emotional bonds and connections; and (c) MCL 700.2801(2)(e)(i) does not require proof that a spouse intends to abandon his or her marital rights; and (ii) the payment of up to $15,000 in legal fees and costs for the preparation and submission of such brief on behalf of the Section; and (iii) the engagement of a lawyer to be determined by the Council to prepare and submit such brief.

Mr. Skidmore stated that the Committee discussed that the Council engage Chris Ballard to prepare and file such brief on behalf of the Council. The Chair stated that, since this would be a public policy position of the Section, the vote of the Council would have to be recorded. Following discussion, the Chair called the question and the Secretary recorded the vote of 14 yes, 1 no, 2 abstain (Chris Ballard and Chris Caldwell), and 6 not voting. The Chair declared the motion approved.

d. Court Rules, Forms & Proceedings Committee - Melisa Mysliwiec: The Chair reviewed the Committee’s report, a memo to the Council from Melisa M.W. Mysliwiec dated December 8, 2017, which Report is included in the Council agenda meeting materials. Ms. Bechler, the Section’s lobbyist, informed the Council that, in her view, the Council did not need to take action at this meeting because: (i) while HB 4821 and HB 4822 were before the House of Representatives, action will be delayed because of the Legislature’s schedule; and (ii) there will be sufficient time in the future for the Council to address HB 5073. The Chair stated that the Council could take action in the future, if warranted, and there were no objections from the floor noted. The Chair will notify Ms. Mysliwiec of the Council’s discussion.
e. State Bar & Section Journals Committee - Rick Mills: Mr. Mills presented a report from the Committee, dated December 11, 2017, which report is included in the Council agenda meeting materials. The Committee’s motion is:

the Probate and Estate Planning Section (i) approves the renewal of the publishing agreement between the Section and ICLE, on the terms described in a proposed Publishing Agreement for the *Probate Journal* (Fifth Renewal); and (ii) authorizes the Chair of the Section to present such Agreement to the State Bar of Michigan for approval, signature, and delivery.

Following discussion, on voice vote, the Chair declared the motion approved.

9. Written Reports Without Oral Presentation: The Chair noted that there were four reports included in the Council agenda meeting materials, for which there was no oral report to be given at the meeting, and for which no action was requested or needed at this time.

10. Other Business: The Chair called for any other matters or business to be brought before the Council at the meeting. Mike Lichterman stated that the ability to deduct for liens from inventory will expire at the end of 2017, and the Chair noted that there was legislation in process to address this matter. Mike Shelton stated that there was no update from the Assisted Reproductive Technology Ad Hoc Committee at this time. There was no other business offered or requested.

11. Adjournment: seeing no other matters or business to be brought before the meeting, the Chair declared the meeting adjourned at 12:15 pm.

Respectfully submitted,
David P. Lucas, Secretary