

**Probate and Estate Planning Section  
State Bar of Michigan**

**NOTICE OF MEETING**

**Saturday, March 11, 2006**

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

**10:15 a.m. Council Meeting**

There will be a meeting of the Committee on Special Projects on **March 11, 2006** at the University Club in East Lansing, Michigan, beginning at 9:00 a.m., followed by a Meeting of the Council of the Probate and Estate Planning Section at 10:15 a.m.

*Please return the confirmation card enclosed with this mailing to Michael J. McClory to indicate whether you will attend.*

Future meetings are scheduled for the following dates:

April 22, 2006

June 17, 2006

Nancy L. Little  
Secretary

**MINUTES OF THE MEETING OF THE COUNCIL  
OF THE PROBATE AND ESTATE PLANNING SECTION**

**February 11, 2006 10:15 a.m.  
East Lansing, Michigan**

- I.** The meeting was called to order by the chair, Michael J. McClory, at 10:15am.
- II. A. Council Members Excused:** Doug Chalgian, Robin Ferriby, Amy Morrissey
- B. Council Officers and Members Present:**
- |                          |                       |                     |
|--------------------------|-----------------------|---------------------|
| Michael J. McClory       | Douglas A. Mielock    | Lauren M. Underwood |
| Nancy L. Little          | Harold G. Schuitmaker |                     |
|                          | Ellen Sugrue Hyman    |                     |
| Daniel E. Cogan          | Shaheen I. Imami      |                     |
| George A. Cooney, Jr.    | Lisa Langton          |                     |
| John R. Dresser          | Marilyn A. Lankfer    |                     |
| Christopher L. Edgar     |                       |                     |
|                          | Kenneth J. Seavoy     |                     |
| Sebastian V. Grassi, Jr. | Richard J. Siriani    |                     |
| George W. Gregory        | Thomas F. Sweeney     |                     |
| Mark K. Harder           | Joan C. Von Handorf   |                     |
- C. Others Present:** Josh Ard, Rebecca Bechler, Lynn Chard, Margaret Lentz, Jeanne Murphy, Lorraine New, Patricia Ouellette, Rob Tiplady, Amy Tripp, Bradley R. Weeks, Elizabeth K. Woodruff
- III. Introduction of Guests:** All attendees, including guests, introduced themselves.
- IV. Secretary's Report:** Lauren Underwood moved, and George Cooney seconded, the approval of the minutes of the January 7, 2006 meeting. The minutes were approved.
- V. Treasurer's Report:** Harold Schuitmaker reminded everyone the reimbursement rate for mileage is \$ .405 beginning January 1, 2006. We are up \$8,000 in membership dues, but our expenses are up, too. Harold also reported that State Bar Rule 9 prohibits payment to officers, except to reimburse expenses in connection with the officers' duties.

**Chairperson's Report:** Mike congratulated Sebastian Grassi, who has been awarded the Excellence in Writing Award by the ABA's Probate and Property publication.

Mike reported there have been technical corrections to the Adoption Code to bring the code into compliance with the provisions in EPIC relating to stepparent adoption. HB 5602 was enclosed in the meeting packet.

Mike also passed out the 2006 COLA adjustments that have been issued by the State for EPIC's provisions regarding intestacy, homestead allowance, exempt property allowance, and family allowance. Mike said these figures are also available on the Wayne County Probate Court website.

Mike reported that the Economics of Law survey is in process. The survey is also being sent to probate judges. Mike thanked the Community Foundation of Southeastern Michigan for once again funding this important study.

Mike reiterated Harold's report regarding State Bar Rule 9. Officers should be sure to turn in their actual expenses.

The Section inadvertently paid the Journal publisher twice. That problem is being resolved.

Mike reported that the legislation relating to the elimination of probate judgeships in Wayne and Oakland County has been resolved. Further, Governor Granholm has stated she will veto any attempt to eliminate these seats on the courts.

There was a hearing on January 25 regarding the proposed Administrative Order regarding privacy issues, which has been the subject of discussion at our last several meetings. Mike has not yet been advised of the outcome of the January 25 hearing, but he is optimistic about its outcome.

Finally, Mike reported that after the last Journal came out, with Mike's invitation to become involved, he has had several calls from people who are interested in becoming more involved with the Council. [Note from Secretary: thanks Mike, for the good work you are doing to increase involvement!]

- VI. Report of the Committee on Special Projects:** Mark Harder reported that the Committee has been hard at work on the Michigan Trust Code. Mark Harder moved, and Marilyn Lankfer seconded, that the Council approve the Committee's report regarding Sec. 807. The Council approved this section. Sections 601 and 602, which were discussed at the Committee level immediately prior to the Council meeting, are being returned to committee for further study.

Mark also reported that the Deficit Reduction Act will probably be signed into law and he will have more to report next month.

There was additional discussion regarding problems relating to when assessors uncap real property that has been transferred to trust. Mike McClory established a new committee, comprised of John Dresser, George Gregory, Margaret Lentz, Ken Seavoy, Rich Shapack, and Rob Tiplady, to study this issue. Committee members will also talk to the Tax Section and Real Estate Section about this issue. John Dresser will address it with the Business Law Section and Pat Ouellette will address it with the Family Law Section.

Mark asked Joan von Handorf to comment on MCR 5.409(b)(2) and, to paraphrase John Bos' old line, "There is no uniformity of practice" regarding valuation on a conservatorship inventory of jointly held items. Joan will bring proposed forms to the Committee meeting in September 2006.

## **VII. Council Committee Reports**

### **A. Internal Governance**

1. **Budget** – *Harold Schuitmaker/Nancy Little, co-chairs*: Harold reminded everyone to make their donations to the Hearts and Flowers Fund. He reported that the budget will be finalized next month.
2. **Bylaws** – *Marilyn Lankfer, chair*: No report.
3. **Michael Irish Award** – *Brian V. Howe, chair*: No report.
4. **Long-Range Planning** – *Douglas A. Mielock, chair*: No report.
5. **Nominations** – *Dirk C. Hoffius, chair*: No report.
6. **Relations with the State Bar** – *John Dresser, chair*: John reported that the Executive Director has been out on medical leave recovering from surgery. John and Lynn Chard sit on a membership services committee that annually reviews the membership programs. One of the items this committee will be looking at this year is health insurance for all members.
7. **Annual Meeting** – *Douglas A. Mielock, chair*: Doug reported that the Section's annual meeting will be held September 16, 2006. The annual organizational meeting will be held October 21, with dinner the night before.

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

1. **Amicus Curiae** – *Mark Harder, chair*: Mark reported the Supreme Court issued an order on January 13, 2006 accepting a motion for leave to appeal in the *In re Van Conant* case. This case involved joint and mutual wills executed by spouses. Following one spouse's death, the other spouse sought to convey property that he owned by virtue of being the surviving joint tenant. After the surviving spouse's death, the estate sought to set aside the deed and recover the property. The Supreme Court would like our Section to brief the following issues: (1) Does a mutual will preclude a surviving spouse from accomplishing by other means (gifts, etc.) a transfer of property inconsistent with the mutual will? This should be addressed in the contract to make the will, and (2) Does MCLA 700.2514 displace the pre-EPIC law regarding joint and mutual wills? Harold moved, and Marilyn seconded, that the Council plan to file a brief and to ask Mark to bring a more detailed proposal about the brief to the March meeting. Sebastian offered a friendly amendment to the motion to authorize the expenditure of up to \$5,000 for the preparation of the brief. The motion passed.

Dan Cogan expressed concerns about whether this case will add substantially to a personal representative's duties to review a testator's actions. George G. also expressed concern that the Supreme Court not make a sweeping statement regarding joint and mutual wills that is not what EPIC intends the law to be.

2. **Continuing Education & Annual Probate Institute** – *Lauren M. Underwood, chair*: Mike thanks Laurel and ICLE for what will be a great line-up at our annual seminar. Lauren reported that George G. will do a special session on Circular 230.
3. **Section Journal** – *Nancy L. Little, chair*: No report.
4. **State Bar Journal** – *Lauren M. Underwood, chair*: No report.
5. **Pamphlets** – *Kenneth J. Seavoy, chair*: No report.
6. **Electronic Communication** – *John Dresser, chair*: No report. John suggested anyone who is interested in law firm technology might consider attending the ABA tech show in April.

**C. Legislation and Lobbying**

1. **Legislation** – *Harold Schuitmaker, chair*: Harold reported that a new budget has been proposed to eliminate the FET.

Harold also reported that the Florida Bar has adopted a new rule in which attorneys must designate an “inventory attorney” to handle files and take over an attorney’s practice if the attorney dies or becomes incapacitated.

HB5524 has been introduced. This bill would amend Michigan’s health care power of attorney statute to permit a person to make a living will, but permits a health professional to decline to act in line with the living will based on a “conscience” exception. Harold asked if the Council wanted to take a position on this bill. Issues raised: if there is a living will and a patient advocate designation, what controls treatment? A person would always have a change of heart and advise a patient advocate but neglect to update the living will. The consensus of the Council was to monitor this legislation, but to take no action at this time.

2. **Uniform Trust Code** – *Mark K. Harder, chair*: Mark reported there are approximately 100 sections in the UTC; the Michigan Trust Code committee has about 66 sections done and 34 to go. All but a few of the sections are in some stage of review at this point. The Council has reviewed about half of the possible Michigan Trust Code at this time.
3. **Statute of Repose** – *John A. Scott, chair*: No report.

#### **D. Ethics, Professionalism and Standards**

1. **Ethics** – *Marilyn A. Lankfer, chair*: Josh Ard stated that lawyers are not mandatory reporters of abuse, but the State Bar may address how lawyers should proceed in cases of fraud.
2. **Unauthorized Practice & Multidisciplinary Practice** – *Thomas F. Sweeney, chair*: Tom and Ellen Sugrue Hyman plan to attend the February 28, 2006 meeting of the State Bar.
3. **Specialization and Certification** – *Richard A. Shapack, chair*: Shaheen reported that Tom put together a preliminary draft of the components of the probate and estate planning practice. The committee continues to work on this and will have more to report in the coming months.
4. **Practice Management** – *Richard J. Siriani, chair*: Rich reported that he spoke with one of the attorneys in the Oakland County Probate Court case relating to whether the inventory fee is payable on the gross or net estate. The case is going forward despite the recent change in the court rules.

Rich also reported that the recent amendment of the court rules relating to inventory fees and the filing of a death certificate have created some confusion and it doesn't appear there is a uniform understanding of how to address some of these issues. For instance, the death certificate may raise questions about domicile. What does "liquid assets" include? Inventory fee rounding also seems to lack uniformity. There is also a requirement that accountings for minor conservatorships must attach a statement of the bank/investment account, but there is no such requirement for adult conservatorships. Also, the date of appointment and the monthly statement dates don't always coordinate to enable the conservator to provide a statement within the time frame required. Also, do statements generated from a bank's on-line site qualify as "statements"? What about attorneys who hold conservatorship funds in an IOLTA account for which there is no separate statements? Mike assigned these issues per Rich's suggestion to the Committee on Uniformity of Practice to sort out and provide the Council with some recommendations.

#### **E. Administration of Justice**

1. **Contested and Uncontested Probate Proceedings** – *Amy N. Morrissey, chair*: No report.
2. **Uniformity of Practice** – *Sebastian Grassi, Jr./Joan Von Handorf, co-chairs*: Joan and Sebastian reported they are trying to get on the agenda for a future meeting of the Probate Judges' Association. Sebastian also will be speaking to the Macomb County Bar Association.

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

1. **Charitable Giving/Exempt Organizations** – *Robin D. Ferriby, chair*: No report.
2. **Transfer Tax** – *George Gregory, chair*: George passed out the monthly tax nuggets.
3. **Guardianships and Conservatorships** – *Douglas A. Chalgian, chair*: No report.
4. **Business Law and Business Section Liaison** – *John Dresser*: John reported that the Business Section meets in early March. Annual reports for limited liability companies and corporations may not be filed on line. The FDIC and OTS recently issued proposed language for engagement letters between financial institutions and outside auditors. AICPA has issued their

proposed position on this. The accounts appear to trying to shift liability back to the financial institutions.

5. **Court Rules and Forms** – *Harold Schuitmaker/Joan Von Handorf, co-chairs*: No report.
6. **Elder Law/Elder Law Section Liaison** – *Josh Ard*: Josh reported that the State appears to be changing policies with regard to certain Medicaid issues. The ability to purchase a single premium life insurance policy with no cash value is under review. A transfer of real estate will be treated as occurring on the date of recording, not the date of execution.  
  
Also: there will be suitability requirements for annuities that are sold to individuals who are 65 years of age or older.
7. **Family Law/Family Law Section Liaison** – *Pat Ouellette*: Pat reported that this section is still working with the Friend of the Court on the notice regarding estate proceedings.
8. **Real Property Law/Real Property Section Liaison** – *Richard Shapack*: No report.
9. **State Bar Liaison** – *Kim Cahill*: No report.
10. **Tax Section Liaison** – *Shirley Kaigler*: No report.
11. **Trust Institutions and Michigan Bankers Association Liaison** – *Daniel E. Cogan*: No report.

X. Other Business

XI. Hot Topics

XII. Adjournment: Mark moved for adjournment, supported by Marilyn.

#### **NEXT MEETING**

**Saturday, March 11, 2006  
University Club  
East Lansing, Michigan**

**COMMITTEE ON SPECIAL PROJECTS MEETING AT 9:00 A.M.  
COUNCIL MEETING AT 10:15 A.M.**