I. Call to Order

The Chair of the Section, Harold Schuitmaker, called the meeting to order at 10:55 a.m.

II. Excused Absences

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

Harold Schuitmaker, Chair          Patricia Ouellette
Doug Chalgian, Chair-Elect         Ellen Sugrue Hyman
George Gregory, Vice Chair         Josh Ard
Mark Harder, Secretary             Tom Sweeney
Marilyn Lankfer, Treasurer          Shaheen Imami
David Kerr                         Richard Siriani
Amy Morrissey                      Hon. David Murkowski
Hon. Darlene O’Brien               James Steward
James P. Spica                     Susan Allan
Marlaine Teahan

The following ex-officio members of the Council also were in attendance:

Hon. Phil Harter
Michael McClurey

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

Rob Tiplady
Robin Ferriby
Bob Taylor
Rebecca Schnelz
III. **Introduction of Guests**

Members of the Council, officers, and guests introduced themselves. The following guests were in attendance:

Constance Brigman  
Steve Jones  
Chris Ballard  
Melissa Mysliwiec  
John Dresser  
Ken Seavoy  
Amy Tripp  
Belinda Fitzpatrick

Jeanne Murphy  
Rhonda Clark  
Lorraine New  
Dan Cogan  
Meg Lentz  
Rebecca Bechler  
Sarah Meinhart  
Val Lafferty

IV. **Minutes of January 16, 2010 Meeting of the Council**

Minutes of the January 16, 2010, meeting of the Council had been previously distributed with the Agenda for the meeting. Upon motion by Mr. Kerr, with support from Judge Murkowski, the minutes were unanimously approved.

V. **Treasurer Report – Marilyn Lankfer**

Ms. Lankfer had distributed a financial report for December 2009 with the Agenda. Dues revenues have been lower than a year ago, but are within the budgeted amount. Expenses are below budget, largely because Journal printing expenses have been lower since distribution began electronically.

VI. **Chairperson’s Report**

Mr. Schuitmaker reported that the Section was asked by the State Bar whether the Section plans to hold its annual meeting in conjunction with the State Bar’s annual meeting in September 2010 in Grand Rapids. Mr. Schuitmaker has advised the State Bar that that the Section has no plans to do so, although the Section has an interest in having a booth if it could do so at low or no cost.

The Alternative Dispute Resolution Section has contacted Mr. Schuitmaker to inquire about a joint meeting or an opportunity to present information to the Council at one of its meetings. Mr. Schuitmaker will follow up with the ADR Section.

Elder Law of Michigan has also contacted Mr. Schuitmaker about its upcoming Joe D. Sutton Call to Justice Award Luncheon to invite the Section’s participation and nomination of individuals worthy of recognition at the luncheon.

VII. **Report of the Committee on Special Projects – Amy M. Morrissey**

Ms. Morrissey reported on the meeting of the Committee on Special Projects that preceded the Council meeting.
The Committee first considered draft legislation creating a presumption concerning the interpretation of estate tax formula clauses. The Committee had recommended the Council endorse the draft legislation included with the Council Meeting Agenda and Materials, with two changes: To extend its effect to beneficiary designations, in addition to wills and trusts; and (2) to authorize Mr. Sweeney, chair of the Transfer Tax Committee, to review the language and move language addressing will, trust, or beneficiary designation provisions that contemplate no estate tax from subsection (1) to subsection (3). The Council approved the draft legislation by a vote of 10-8, with one abstention.

The Committee also considered the Guardianship Committee’s recommendation regarding the registration of foreign guardianships under the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPJA). The Committee’s Report was attached to the Agenda and Meeting Materials distributed prior to the meeting. The Committee approved and recommended to the Council the Guardianship Committee’s proposed “Exhibit B”, which would merely permit registration of the foreign guardianship appointment. However, the Committee also had discussed how long a registration of a foreign appointment should be valid and whether registration would subject the foreign guardian and the ward to the jurisdiction of the Michigan courts. As a result of these discussions, the sections were referred back to Guardianship Committee.

The Committee also reviewed draft letters prepared by Mr. Kerr concerning proposed ethics rule changes. These letters would implement the Council’s position on these rules as adopted in January. A copy of the materials that were discussed is Attachment 1.

The Committee on Special Projects had approved and recommended the draft letters to the Council. The Council approved Mr. Kerr’s letter concerning proposed rule 1.5, with one abstention. The Council also separately approved Mr. Kerr’s letter concerning proposed rule 3.3 as well.

Finally, the Committee discussed HB 5195 (Attachment 2), which would modify the slayer provisions of EPIC sections 2802 through 2804 and extend these sections to circumstances in which an individual abuses or neglects someone. The amendment ordinarily would bar someone convicted of abuse or neglect from inheriting or benefitting from a governing instrument. No action was taken with respect to this legislation.

VIII. Standing Committee Reports

A. Internal Governance

1. Budget – George Gregory
   
   No report.

2. Bylaws – Marilyn Lankfer
   
   No report.
3. Michael Irish Award – Brian Howe
   No report.

4. Long Range Planning – Doug Chalgian/Nancy Little
   No report.

5. Nominations – Doug Mielock
   No report.

6. Relations with the State Bar – Thomas F. Sweeney
   No report.

7. Annual Meeting – George Gregory
   Mr. Gregory reported that the annual meeting has tentatively been scheduled for September 11 in Lansing.

B. Education and Advocacy Services for Section Members

1. *Amicus Curiae* – Ellen Sugrue Hyman
   Ms. Sugrue Hyman reported the court of appeals has “unpublished” the *Graves* decision.

2. Continuing Education and Annual Probate Institute – George Gregory
   Mr. Gregory distributed a short report (Attachment 3) concerning early attendance figures for the Probate Institute and recent attendance at programs regarding the Michigan Trust Code. Mr. Siriani moved to authorize payment from the Hearts and Flowers Fund to the Cherry Capital Cycling Club of $200 for the Club’s support of the cycling tour in conjunction with the Institute in Acme in May. Following support, the motion was approved.

3. Section Journal – Nancy L. Little
   Melissa Mysliwiec reported on Ms. Little’s behalf. Authors for the summer issue have been secured and it is being written. Articles are due April 1.

4. State Bar Journal – Amy M. Morrissey
   No report.
5. Pamphlets – Ellen Sugrue Hyman

Ms. Hyman reported that she has been re-writing and updating several pamphlets. She solicited and obtained several volunteers to review the drafts, which she hopes to present at an upcoming meeting.

6. Electronic Communications – Josh Ard

No report.

C. Legislation and Lobbying

1. Legislation – Harold G. Schuitmaker/John R. Dresser/George Gregory

No report.


Mr. Chalgian, co-chair of the Committee, advised that the bill to enact an old version of the Uniform Power of Attorney Act has been withdrawn. The request of the Power of Attorney Committee, as contained in the meeting package, was briefly discussed; however, no one on the Council wished to pursue the matter any further. Mr. Schuitmaker reported that 2008 H.B. 5729 is expected to be reintroduced. This bill would require an acceptance from an agent before the power of attorney would be effective. It will be taken up by the Council when it has been reintroduced in the Legislature. Because the legislation based on the Uniform Power of Attorney Act has been withdrawn, and because of the Council’s wish to not pursue this legislation any further, Mr. Schuitmaker announced that the Power of Attorney Act Committee is dissolved and its members are thanked for their time and efforts.

3. Michigan Trust Code – Mark K. Harder

Mr. Harder reported that the technical corrections bill has been drafted and will be reviewed and moved forward.

D. Ethics and Professional Standards

1. Ethics – J. David Kerr

No further report.

2. Unauthorized Practice & Multidisciplinary Practice – Bob Taylor

Ms. Ouellette reported on a meeting with Attorney General’s office to discuss an unauthorized practice of law case involve a trust mill. The Attorney’s General and the Committee believe a victim has been
identified. Ms. Ouellette indicated the Committee would like the Council to appropriate $270 to enable the victim to purchase a trust amendment being promoted. Mr. Kerr moved, with support from Mr. Steward, to authorize $270 for this purpose. The motion passed unanimously.

3. Specialization and Certification – James B. Steward

Mr. Steward reported that his Committee will be meeting shortly.

4. Practice Management – Patricia Ouellette

No report.

E. Administration of Justice


Mr. Imami reported the Committee is reviewing what matters are handled via jury trials.

Judge Murkowski reported that he had discussed the possible streamlining of appeals from probate court by permitting only direct appeals to the court of appeals and foregoing any appeals to the circuit courts. Court of Appeals Judge Murphy has indicated the court of appeals will not oppose this change. There are several reasons for taking this step: Efficiency as a result of fewer levels of appeals; with an increasingly unified court system direct appeals to the courts of appeals avoids judges sitting as the appellate court to rule on the opinions of colleagues; and a single appellate forum avoids misfiled appeals, which is a regular problem. Mr. Schuitmaker referred the matter to Ms. Teahan’s Court Rules Committee to draft necessary court rule and/or statutory changes.

2. Uniformity of Practice – Rhonda Clark

Ms. Clark reported the Committee intends to pick a single topic and begin working toward greater uniformity. She proposes to work with the Probate Registers Association and work first on informal probate proceedings.

F. Practice Issues, Related Areas & Liaisons

1. Charitable Giving/Exempt Organizations – Robin D. Ferriby

No report.
2. Transfer Tax – Thomas F. Sweeney

Mr. Sweeney reported the latest rumors about the reinstatement of the estate tax.

3. Guardianships and Conservatorships – Constance Brigman

Ms. Brigman announced that at the March Council meeting she would like to present the entire UAGPPJA Act for the Council’s consideration and approval.


No report.

5. Elder Law/Liaison to Elder Law Section – Amy R. Tripp

No report.

6. Family Law/Family Law Section Liaison – Patricia M. Ouellette

No report.

7. Real Property Law/Real Property Section Liaison – Daniel P. Marsh

No report.

8. State Bar Section to Section Action Team Liaison – Robert Tiplady

No report.

9. Tax and Taxation Section Liaison – Lorraine F. New

No report.

10. State Bar Liaison – Richard J. Siriani

No report.

11. Court Rules and Forms Committee Liaison – Marlaine C. Teahan

Ms. Teahan reported that the Supreme Court has approved the rules proposed by the Section related to the Michigan Trust Code. Because comments can be submitted still, there remains a possibility of changes.
12. Trust Institutions and Liaison with Michigan Bankers Association – Susan Allan

No report.


No report.

14. Law School Liaison – Josh Ard

Mr. Ard reported that several law students have joined the Section since the Section waived dues.

IX. **Other Business**

None.

X. **Hot Topics**

None.

XI. **Adjournment**

There being no further business, the Council meeting was adjourned at 11:20 a.m.

Respectfully submitted

Mark K. Harder
Secretary

HD94611-5
ATTACHMENT 1

Proposed Responses to Proposed Changes to the Michigan Rules of Professional Conduct
ATTACHMENT 2

H.B. 5195
ATTACHMENT 3

Report of the Continuing Education and Annual Probate Institute Committee