

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

February 19, 2011
University Club
Lansing, Michigan

Minutes

1. Call to Order

The Chair of the Section, Doug Chalgian called the meeting to order at 10:25 a.m.

2. Attendance

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

Doug Chalgian, Chair	Shaheen Imami
George Gregory, Chair Elect	Meg Lentz
Mark Harder, Vice Chair	Hon. David Murkowski
Tom Sweeney, Secretary	Rebecca Schnelz
Amy Morrissey, Treasurer	Rick Sirini
Susan Allan	James P. Spica
Josh Ard	Bob Taylor
Constance Brigman	

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

Robin Ferriby	Patricia Ouellette
Ellen Sugrue Hyman	James Steward
David Kerr	Rob Tiplady
Hon. Darlene O'Brien	Marlaine Teahan

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

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

John Bos
Phillip Harter
Doug Mielock
Michael McClory
Harold Schuitmaker

E. Others in Attendance

Christopher Ballard	Michael Lichterman
Becky Bechler	David Lucas
Stephen Brey	Rick Mills
Brittany Catterick	Jeanne Murphy
Dan Cogan	Lorraine New
Belinda Fitzpatrick	Robert Nemzin
Kathleen Goetsch	Sharri L. Rolland Phillips
Jill Goodell	Tracy Sonneborn
Tim Goodnow	Christine Savage
Fred Hoops	Nancy Welber
Hon. Michael Jaconette	

3. Internal Governance

A. Minutes of January 15, 2001 Meeting of the Council

Minutes of the January 15, 2011 meeting of the Council had been previously distributed with the Agenda for the meeting. Upon motion by Rick Siriani with support from George Gregory, the minutes were approved by a unanimous vote of all 15 council members present.

B. Treasurer Report

Amy Morrissey distributed a financial report through December 31, 2010 (**Attachment 1**). The report indicated that the fund balance as of the end of December, 2010 was \$246,922. Ms. Morrissey reported that dues revenue of \$111,790 now equaled 97% of the budgeted revenue amount of \$115,000.

C. Chairperson's Report

Doug Chalgian reminded all present that the March, April and June meetings would begin at 8:30 a.m, to discuss the subject of attorney specialization. He then asked Rick Siriani to report on the Committee on Special Projects meeting.

D. Report of the Committee on Special Projects

Rick Siriani reported that the Committee recommended approval of the proposed changes to MCL 333.1051 et. seq. (Michigan Do Not Resuscitate Procedure Act) and MCL 700.5314(c) of EPIC, except that the latter would include the deletion of both the clause "...if it is in the Ward's best interest" and the last sentence of the draft. Upon motion by Connie Brigman, seconded by Rick Siriani, the Council by the unanimous approval of all 15 council members present, approved this language to be forwarded to the Michigan Legislature for consideration.

Rick Siriani also reported on a discussion regarding Senate Bill 92, which proposed certain changes in Michigan's Durable Power of Attorney Act. Among

the comments were those related to the practicality of some of the changes, whether the changes would be retroactive, the liability of an agent who signed an acceptance but does not act and the impact of such a statute on commercial loan or business entity agreements. Harold Schuitmaker agreed to contact the sponsor of Senate Bill 92 to request a deferral of any action until the Council has had an opportunity to review this and respond. The Durable Power of Attorney Committee chaired by Meg Lentz and Dan Cogan, with committee members, James Steward, Susan Allan and Rachel Zapczynski were asked to review this matter starting with the SB 92 as revised by the Michigan Bankers Association (MBA) and give notice to the Business Law and Real Estate Law Sections of the State Bar who may be unaware of its possible effect and to contact the MBA. The committee was asked to report at the March meeting with recommendations.

4. Reports of Ongoing Active Committees Involving Special Projects and Active Committees

A. Legislation and Special Projects

Doug Mielock reported that a statute of repose (Senate Bill 77) had been introduced in the form proposed several years ago, which covered a limited group of the learned professions involved in architecture, surveying and related fields. Following a discussion of the merits of expanding the professions covered by the bill, George Gregory and Amy Morrissey were added to the committee consisting of Doug Mielock as Chair, with John Bos and John Scott as members, to pursue this expansion of the covered professions. Becky Bechler, the Council's lobbyist, was asked to assist the committee in approaching the sponsor regarding this change in the proposed legislation.

B. Updating Michigan Estate/Trust Law

Shaheen Imami reported that the committee was continuing to review the subject of self settled asset protection trusts. He also reported on behalf of the Probate Appeals and Jury Trials Committee that the Michigan Probate Judges Association had approved the changes to the draft of Michigan Court Rule 5.801 suggested by the Court of Appeals Rules Committee. This Court Rule change would provide that all appeals from probate courts would go to the court of appeals. Upon motion by Shaheen Imami, seconded by George Gregory, the Council by a unanimous vote of all 15 members present approved forwarding the recommended Court Rule change to the Supreme Court Administrative Office.

C. ICLE

Jeanne Murphy passed out a proposal from ICLE for both a searchable archive of Journal issues and for hosting the EPIC question and answers developed by Judge Harter for an initial three year term. Initially ICLE purposed including Probate Journal content beginning in 1994, since that is when ICLE began printing the Journal. She estimated it would take one year to complete the project and ICLE

was asking for a one time fee of \$2,500 to prepare the searchable and browseable archive of Probate Journal articles beginning in 1994. The fee for the first three years would total \$2,500. Fees after the first three years would be negotiated when the initial term expired. In the meantime ICLE would host the EPIC questions and answers in the Probate Review until the section member area is ready to launch. The Probate Section would be responsible for continued contributions to the EPIC question and answer committee, as before. ICLE also offered to provide a modest honorarium to Judge Harter for his services as the clearing house for the questions and answers and preparation of the review material and for general advice on creating a useful resource. Finally, ICLE would like to have the right to link the individual EPIC questions and answers and relevant state statute sections with a reporter's commentary. This material is accessible to all subscribers of the Probate Source Book online regardless of section membership.

Concerns were raised regarding the importance of requiring section membership to access the archival materials and the EPIC questions and answers. Council asked Ms. Murphy to have ICLE review its proposal with respect to limiting access to certain materials to section members who had paid section dues since their funds are being used to support this project.

D. Decanting Trusts

Jim Spica gave a brief report on a number of the issues involved in providing for the decanting of trusts. He pointed out that there are first, the distinctions between fiduciary powers of appointment and non-fiduciary powers of appointment. He next pointed out that the distinction between trusts that were irrevocable on September 25, 1985 for generation skipping transfer purposes and other trusts. Finally, he pointed out the distinction between declarative legislation and innovative legislation. He indicated the committee had been meeting regularly and would be working on these issues.

E. MRPC 1.15A

Tom Sweeney reported that a committee consisting of Marlaine Teahan, Doug Mielock, Jim LoPrete and Howard Linden and himself had met and developed a letter listing four concerns regarding Rule 1.15A. This letter had been sent to the State Bar along with an invitation for oral dialog to clarify the intent of the rule, the language used to express that intent and the possible unintended consequences under the language used.

F. Possible Revisions to Public Act 224

Tom Sweeney also reported that Meg Lentz and he had developed some proposed revisions to the legislation enacted in early December, 2010, prior to the enactment of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 by the U.S. Congress. He reported that the ad hoc

committee had reviewed the language and that it would be circulated to members of the Council for consideration at the March meeting.

G. Legislation Report

Becky Bechler also reviewed some recently introduced legislation and indicated that she will be emailing copies of new bills which might be of interest to the Council. She also reported that proposed revisions to the Uniform Principle and Income Act had been introduced as well as a proposed sales tax on services. She also noted that a proposal to modify the probate inventory fee to base it solely on net value had been introduced.

H. Tax Nugget

Lorraine New reported that the U.S. Treasury has not yet formalized its basis reporting form for estate tax purposes which is Form 8939. She indicated that she understands that when the form is published all taxpayers will have a minimum of 90 days to file the form. She indicated that the form is not required to be filed by April 15, 2011.

5. Adjournment

There being no further business brought before the Council, the meeting adjourned at 11:55 a.m.

Respectfully submitted

Thomas F. Sweeney
Secretary