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

February 18, 2017
Lansing, Michigan

Minutes

I. Call to Order

The Chair of the Section, James Steward, called the meeting to order at 10:28 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
George F. Bearup
Christopher J. Caldwell
Rhonda M. Clark-Kreuer
Kathleen M. Goetsch
Hon. Michael L. Jaconette
Mark E. Kellogg
Michael G. Lichterman
Katie Lynwood
Raj A. Malviya
Richard C. Mills
Melisa M.W. Mysliwiec
Lorraine F. New
Nathan R. Piwowarski
David L.J.M. Skidmore
Geoffrey R. Vernon
Nancy H. Welber

A total of 21 council members and officers were present, representing a quorum.

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

Robert C. Labe
Nazneen H. Syed
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:
George W. Gregory
Kenneth E. Konop
Nancy L. Little
Thomas Sweeney

E. Others in attendance:
Aaron Bartell
Susan Chalgian
Mark DeLuca
Daniel Hilker
Mallory Kallabat
Jeff Kirkey, ICLE
Joann Kline
Neal Nusholtz
Kurt A. Olson
Scott Robbins
Mike Shelton
James P. Spica, liaison to the Uniform Law Commission
Amy Rombyer Tripp, liaison to the Elder Law Section
Paul Vaidya

III. Minutes of the January 14, 2017, Meeting of the Council
The minutes of the January 14, 2017, Meeting of the Council were attached to the combined Agenda for this meeting posted on the Section’s web page prior to the meeting. Mr. Ballard 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. He reported that section membership is down by approximately 50 people, which will result in section revenue falling below the budgeted amount.

V. Chairperson’s Report – James Steward
• Mr. Steward’s report was included as part of the materials
• The section has historically sponsored a bike tour held at the probate institute. Mr. Steward made a motion that the section sponsor the tour again this year, with the sponsorship amount to be paid out of the hearts and flowers fund. The motion was seconded. The motion was approved on a voice vote by all Council members
present, except for George Bearup, who abstained.

- The Section received a request from the ADR section to act as cosponsor for a seminar entitled "Representing Clients in Mediation." There would be no cost to the Section. Mr. Steward made a motion to approve the cosponsorship. The motion was seconded. The motion was approved unanimously on a voice vote, with no nays and no abstentions.
- Mr. Steward will be forming a new ad hoc committee on divided and directed trusteeships, of which Jim Spica will be chair.
- Jim Spica has been appointed as the Section's liaison to the Uniform Law Commission.
- The section is following the Maki v. Coen case, which deals with whether a lawyer for a fiduciary may be sued by the wards/beneficiaries, or whether only the fiduciary has standing. A published opinion was recently issued by the Michigan Court of appeals, finding in favor of the lawyer.

VI. Report of the Committee on Special Projects – Geoffrey R. Vernon

Mr. Vernon presented the report of the committee.

The committee discussed a possible change to EPIC relating to the ability of a holder of a power of appointment to represent permissible appointees, takers in default, etc. The matter will be deferred to a future meeting in order to give those attending the CSP meeting more time to digest the complexities of the proposal before voting on a recommendation to Council.

The committee discussed a possible change to the Uniform Fraudulent Transfers Act (MCL 566.31 et seq) to take into account the provisions of the Qualified Dispositions in Trust Act. The committee presented technical amendments to the UFTA. The committee made a motion to support the proposed amendments, giving the committee the authority to make nonsubstantive amendments, as needed, and to make changes to the draft language which would make the changes retroactive to the effective date of revisions made to the UFTA in 2016. The motion passed, with 21 votes in favor, none against, and no abstentions.

The committee presented a proposed amendment to MCL 700.7103(n), relating to the definition of trust protector. The committee made a motion to submit the proposed language to the Legislative Services Bureau, with the committee having the ability to make nonsubstantive changes, as needed. The motion passed, with 21 votes in favor, none against, and no abstentions.

The committee presented proposed amendments to the certificate of trust provisions of EPIC (MCL 700.7913). The committee also proposes changes to the real estate certificate of trust statute to eliminate the current real estate certificate of trust and instead refer to the certificate of trust provisions in EPIC. Following discussion, the committee will make revisions to the proposed language and will present the revised version at a future date.

VII. Standing Committee Reports

A. Internal Governance

1. Budget – Christopher A. Ballard – no report.
Bylaws – Nancy H. Welber

Ms. Welber presented a proposal that was signed by three members of the section to delete section 8.4 of the bylaws, which requires that any printing done by the section be done under the supervision of the State Bar. Ms. Welber made a motion to approve the amendment and present it to the section membership with a recommendation that the section membership adopt the amendment. The motion was seconded. The motion passed, with 21 votes in favor, none against, and no abstentions.

Ms. Welber will arrange to have the proposed amendment provided to the members of the section at least 30 days prior to the membership meeting at which the amendment will be presented for a vote.

Awards – Amy N. Morrissey—no report.

Planning – Marlaine C. Teahan—no report.

Nominating – Thomas W. Sweeney

Mr. Sweeney outlined the procedure for nominations and solicited input to the committee. Recommendations are due by the end of April, and the committee will meet in May to produce a slate of candidates.

Annual Meeting – Marlaine C. Teahan

Ms. Teahan reported that the section's annual meeting will be September 9, in Lansing.

Legislation and Lobbying

Legislative Analysis and Monitoring Committee

Mr. Hilker made the report on behalf of the committee. He discussed two bills that are currently working their way through the legislature.

SB 39 would make changes to the funeral representative provisions in EPIC, clarifying the surviving spouse sections. The committee has decided to let the legislation proceed as drafted, without further comment from the section.

SB 49 deals with compensation for guardians and conservators. Under the current language of EPIC, a court may not approve compensation to a guardian or conservator from a third party, a fiduciary can only receive compensation from the estate of the ward. The bill would modify MCL 700.5106 to permit compensation from other sources. The committee had some concerns with the language, as drafted, which permits third party compensation without any oversight. The committee recommends a change that would permit third party compensation, but would still require that all compensation be subject to the review of the court. The guardianship and conservatorship committee will take these concerns into account and present proposed language that could be submitted as an amendment to the bill.
2. Legislation Development & Drafting Committee – Nathan R. Piwowarski

Mr. Piwowarski reported that the committee is meeting regularly. They are currently focusing on three areas: the exempt property allowance (the Jajuga fix), COLA related work, and long-arm jurisdiction in guardianship and conservatorship cases.

Mr. Vernon discussed a recent Court of Appeals case (*Allard v Allard*), which could eliminate the ability of premarital agreements to address spousal support in the case of a divorce. The Family Law Section submitted an amicus brief in the Court of Appeals case. The committee will look at the ramifications of the case and possible solutions, including looking at whether Michigan should adopt the Uniform Premarital Agreements Act.

3. Ad-Hoc Legislative Drafting Committee

There was no formal report, but the Council conducted a general discussion on the status of the *Mardigian* case. The case was recently argued in the Michigan Supreme Court. The committee is waiting on the result before taking any action.


5. Assisted Reproductive Technology Ad Hoc Committee – Nancy H. Welber

Ms. Welber reported that she had met with Right to Life to discuss the draft legislation. They are generally supportive of the draft. The section’s lobbyist is trying to find a sponsor for the legislation, and feels that there is a very good chance of passage.

C. Education and Advocacy Services for Section Members

1. Amicus Curiae – David L.J.M. Skidmore

Mr. Skidmore reported that there was a request for an amicus brief for the *In re Vansach* case, which deals with Medicaid reimbursement. The Elder Law and Disability Rights Section has filed a motion to submit an amicus brief. The committee, following an initial review, recommended that the Probate and Estate Planning Section not file an amicus brief in this matter. Mr. Steward provided some additional detail in the case. Ms. Chalgian reported that there is another case working its way through the courts that might have better facts. Mr. Stewart asked the committee to conduct a further review and return to the Council with a recommendation.

2. Probate Institute – Marguerite Munson Lentz

Ms. Lentz reported that registration for the institute is open. Registrations are up so far this year. In addition to the institute, there will be an add-on seminar that deals with the income tax aspects of estate planning.
Ms. Little presented the report. The latest issue of the Journal was just published. She would like to solicit articles on powers of appointment and assisted reproductive technology.


Mr. Lucas reported that the State Bar will provide us with names of new section members. The committee plans to contact new members to invite them to section activities and council meetings.

D. Ethics and Professional Standards

1. Ethics & Unauthorized Practice of Law– Katie Lynwood—

Ms. Lynwood reported that the State Bar is working on a seminar that will be presented at multiple locations throughout the state on October 11 entitled "Who Should You Trust?"

E. Administration of Justice


Ms. Teahan reported on the status of the changes to the probate court appeals rules. The State Bar is considering the materials that the section submitted. The comment period will close in three weeks. Oral argument on the proposal will probably be in May.

F. Areas of Practice

1. Real Estate – Mark E. Kellogg

Mr. Kellogg reported that the committee will be looking at preparing new legislation on property tax uncapping. They are working with the legislature to find a possible sponsor.

2. Tax Committee – Lorraine F. New

Ms. New presented a tax nugget with three items.

(i) Closing letters no longer being automatically generated following the filing of estate tax returns. The IRS has indicated that the taxpayer can rely on a transcript report instead.

(ii) The IRS is still working on 2704 regulations. Gift tax returns probably need to disclose that the value of the gifts reported on the return doesn't comply with the proposed regulations. AICPA has some good language to use to satisfy the disclosure requirements.

(iii) The IRS issued Notice 2017-15. Under the notice, same sex spouses may be able to file retroactively for tax credits that were previously taken away from them. On any filing, make sure
to include a notation that it is being made pursuant to the Notice.

Mr. Malviya gave a brief summary of the proposed tax plans coming from the Trump administration, and will present additional information on the plans at the next meeting.


4. Guardianship, Conservatorship, and End of Life Committee – Rhonda M. Clark-Kreuer

Ms. Clark-Kreuer reported on SB 270 that passed last year without getting input from the State Bar. The bill was backed by AARP. The committee would like to propose a technical correction to the new law. They will come back to the council with a formal recommendation.

VIII. Other Reports

A. Liaisons


3. Elder Law and Disability Rights Section Liaison – Amy Rombyer Tripp—no report.

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

5. ICLE Liaison – Jeanne Murphy—no report.


10. SCAO Liaisons – Constance L. Brigman, Michele C. Marquardt, Rebecca A. Schnelz—no report.


13. Taxation Section Liaison – George W. Gregory

Mr. Gregory reported that there is an upcoming seminar on May 25. In addition, the section is
looking for articles for their journal.

IX. **Other Business**

Mr. Konop reported that the Oakland County Bar solicited help in drafting patient advocates and wills on behalf of first responders. The request for help solicited drafting help from both lawyers and non-lawyers. More information will be presented to the Ethics & Unauthorized Practice of Law committee, which will determine whether the section should follow up.

X. **Hot Topics**

XI. **Adjournment**

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