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

February 17, 2018
Lansing, Michigan

Minutes

1. Call to Order: The Chair of the Section, Marlaine C. Teahan, called the meeting to order at 10:32 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
David P. Lucas, Secretary
David L.J.M. Skidmore, Treasurer
Christopher J. Caldwell
Kathleen M. Goetsch
Nazneen Hasan
Angela M. Hentkowski
Michael L. Jaconette
Mark E. Kellogg
Robert B. Labe
Katie Lynwood
Richard C. Mills
Melisa M.W. Mysliwiec
Lorraine F. New
Kurt A. Olson
Christine M. Savage
Geoffrey R. Vernon

A total of 17 Council officers and members were present, constituting a quorum

3. Absences
   a. The following members of the Council were absent with excuse:

Marguerite Munson Lentz
Christopher A. Ballard

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Rhonda M. Clark-Kreuer  
Michael G. Lichterman  
Raj A. Malviya  
Nathan R. Piwowarski  

b. The following officers and members of the Council were absent without excuse: none  
c. The following ex-officio members of the Council were present:  
   George W. Gregory  
   Michael J. McClory  
d. The following liaisons to the Council were present:  
   Daniel W. Borst  
   Susan Chalgian  
   Patricia M. Ouellette  
e. Others present:  
   Aaron Bartell  
   Ryan Bourjaily  
   Georgette David  
   Dan Hilker  
   Andy Mayoras  
   Scott Robbins  
   Jim Ryan, Public Affairs Associates  
   Nick Ryan  
   Mike Shelton  
   Paul Vaidya  

4. Minutes of January 20, 2018 Meeting of the Council: it was moved and seconded to approve the Minutes of the January 20, 2018 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. Chair’s Report – Marlaine C. Teahan: The Chair reviewed the Chair’s Report which was included with the meeting agenda materials, including (i) that the Chair, on behalf of the Section, has submitted a letter to the Legislature, describing the Section’s opposition to SB 713, in its current form; and (ii) that Candace Crowley, of the State Bar has requested lawyers to volunteer for the Bar’s Modest Means Workgroup, and the Chair encouraged Section members to so volunteer.
Mike McClory reported on a project to convert archived Court records to digital format, and then destroy paper records; Mr. McClory stated that this project is different from the E-file project. Mr. McClory stated that one of the issues is whether Courts will be required to destroy archived documents, or authorized to destroy archived documents.

George Gregory reported on the status of divided and directed trusteeship legislation and community property trust legislation.

Dan Hilker reported that HB 4410 (the Jajuga fix) has passed the House.

The Chair continued the review of the Chair’s report, including a description of a meeting with several hospital lobbyists regarding HB 5075 and HB 5065, as described in the Chair’s Report.

The Chair announced that the Visitation of Competent Adults Ad Hoc Committee has reviewed the proposed legislation, provided a report, and is now disbanded.

The Chair announced the formation of the Uniform Fiduciary Income and Principal Act (UFIPA) Ad Hoc Committee, and charged the Committee with reviewing the Uniform Law Commission’s UFIPA draft, which is scheduled for action by the Commission in July, 2018. The Chair appointed Jim Spica as Chair of the Ad Hoc Committee, and asked for volunteers to serve on the Ad Hoc Committee.

6. Committee Reports

a. Committee on Special Projects (CSP) - Geoff Vernon: Mr. Vernon reported that the CSP is seeking a sponsor for the EPIC Omnibus legislation, and that the CSP proposed the addition of a definition of “Charitable trust” to MCL 700.7103(c) as follows: “Charitable trust means a trust or portion of a trust created for a charitable purpose described in section 7405(1) that is a material purpose of the trust.” After discussion of this definition at CSP, the CSP Chair will direct the definition back to the Legislation Development Committee for further review.

b. Court Rules, Forms, & Proceedings Committee - Melisa Mysliwiec: Ms. Mysliwiec referred to the Committee’s report which is included in the meeting agenda materials, including (i) the public administrator bills are now Public Acts (PA 13 and 14 of 2018); (ii) the Committee’s work regarding Automatic Mediation legislation; (iii) HB 4752 (removing the sunset on the deduction of liens from the value of real estate for estate inventory purposes) has been passed, but is not yet signed by the Governor; and (iv) the Committee will approach SCAO and try to change their position, that liens do not reduce the value of an estate for purposes of determining eligibility for proceedings under MCL 700.3982.
c. Guardianship, Conservatorship, and End of Life Committee - Rhonda Clark: The Chair suspended the agenda order and heard a report by the Committee during the meeting of the Committee on Special Projects. Ms. Clark reported on various legislative issues, including (i) SB 713, including a possible future request that the Council take a position on constitutional and other grounds to supplement the Section’s Public Policy Position; (ii) SB 784, regarding do-not-resuscitate orders for minors. The Council discussed SB 784, including the issue of notification of minors age 14 or more at the time that the guardian is granted such authority, the interaction with POST legislation, and whether parents have the authority to sign a DNR order without Court action. The Chair requested that the Committee continue to consider SB 784, with a view to proposing a public policy position on SB 784.

d. Real Estate Committee - Mark Kellogg: Mr. Kellogg reported on HB 4905, regarding the eligibility for the real estate tax personal residence exemption, when the owner of the real estate is in a nursing facility, and the Council discussed the legislation. The Committee’s motion is:

The Probate and Estate Planning Section supports the Substitute for House Bill No. 4905, with the deletion of the phrase “is not leased and” from section 7cc(5)(d) of such proposed legislation.

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, 0 opposed to the motion, 0 abstain, and 6 not voting. The Chair declared the motion approved.

e. Electronic Communications Committee - Mike Lichterman: The Chair stated that Mr. Lichterman’s report is included in the meeting agenda materials.

f. Tax Committee - Lorraine New: Angela Hentkowski reported on a Tax Nugget and suggested alerts regarding the Tax Cuts and Jobs Act that are included in the meeting agenda materials.

g. Membership Committee - Nick Reister: Angela Hentkowski reported on behalf of the Committee, including (i) social events at the Acme Estate Planning Institute; (ii) informed the Council that volunteers were needed for the Section’s table at the Institute; and (iii) the Committee is working on Section regional gatherings.

7. Written Reports Without Oral Presentation - The Chair noted the several reports that were included with the agenda materials.

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8. Other Business

a. Amicus Curiae Committee: David Skidmore presented materials regarding In the Matter of Dorothy Redd, Legally Incapacitated individual, Michigan Court of Appeals No. 335152, stating that the Appellant in that matter has requested that the Council seek leave to submit an amicus curiae brief in support of the Appellant’s Application for Leave to Appeal to the Michigan Supreme Court. The Committee’s motion is:

The Probate and Estate Planning Section declines the request that the Section seek leave to submit an amicus curiae brief in support of the Appellant’s Application for Leave to Appeal in In the Matter of Dorothy Redd, Legally Incapacitated individual, Michigan Court of Appeals No. 335152.

The Chair stated that since the Committee’s motion does not seek a public policy position of the Section, the vote of the Council could be taken as a voice vote. Following discussion, the Chair called the question, and, on voice vote (with no nays and no abstentions), the Chair declared the motion approved.

b. Mr. McClory reported on the status of the e-filing project, including that (i) the Supreme Court has issued a stay on the Court Rules proposals; and (ii) how pro se litigants would be required to file. The Chair stated to the Council that it was important for the Section to be involved in the development of the e-filing rules and asked Mr. McClory to follow up with the Chair of the e-filing Workgroup to be sure we are able to send a Council member to participate in the Workgroup.

There was no other business offered or requested.

9. Adjournment: seeing no other matters or business to be brought before the meeting, the Chair declared the meeting adjourned at 11:46 am.

Respectfully submitted,
David P. Lucas, Secretary