

**MINUTES OF THE JOINT MEETING OF THE COUNCIL
OF THE PROBATE AND ESTATE PLANNING SECTION AND COMMITTEE ON
SPECIAL PROJECTS**

**January 19, 2008, 2007 8:30 a.m.
University Club, East Lansing, Michigan**

- I. The joint meeting of the Probate and Estate Planning Council and Committee on Special Projects was called to order at approximately 8:30 a.m. by chair, Lauren M. Underwood.
- II. **A. Council Members Excused:**
Robin D. Ferriby Nancy L. Little
Sebastian V. Grassi, Jr. James B. Steward
Hon. Kathryn A. George Robert P. Tiplady
- B. Council Officers and Members Present:**
Lauren M. Underwood George W. Gregory
Harold Schuitmaker Douglas G. Chalgian
- W. Josh Ard Marilyn A. Lankfer
Daniel E. Cogan Douglas A. Mielock
John R. Dresser Amy N. Morrissey
Mark K. Harder Rebecca A. Schnelz
Ellen Sugrue Hyman Richard J. Siriani
Shaheen I. Imani Thomas F. Sweeney
 Marlaire C. Teahan
 Joan C. Von Handorf
- C. Others Present:**
Susan M. Allen Daniel P. Marsh
Cynthia S. Andrews Hon. David M. Murkowski
Ronald A. Berridge Jeanne Murphy
Samuel D. Carpenter Lorraine F. New
Kevin M. Cotter Patricia M. Quelette
Henry M. Grix Valerie L. Rice
Hon. Phillip E. Harter Tonya Schuitmaker
Stephen W. Jones Carol A. Sewell
Mark E. Kellogg James P. Spica
Kenneth E. Konop Teresa S. Sullivan
J. David Kerr Derek A. Walters

- III. **Introduction of Guests:** All attendees, including guests, introduced themselves.
- IV. **Secretary's Report:** No Report.
- V. **Treasurer's Report:**
- VI. **Chairperson's Report:**
- VII. **Report of the Committee on Special Projects:** *Richard J. Siriani and Amy N. Morrissey, Co-Chairs of the Committee on Special Projects:* No report.

VIII. Standing Committee Reports

A. Internal Governance

- 1. **Budget** – *George W. Gregory., chair.* No report.
- 2. **Bylaws** - *Marilyn K. Lankfer, chair.* No report.
- 3. **Michael Irish Award** - *Brian V. Howe, chair.* No report.
- 4. **Long-Range Planning** - *Lauren M. Underwood, chair.* No report.
- 5. **Nominations** - *Henry M. Grix, chair.* No report.
- 6. **Relations with the State Bar** - *John R. Dresser, chair.* No report.
- 7. **Annual Meeting** - *Lauren M. Underwood, chair.* No report.

B. Education & Advocacy Services for Section Members

- 1. **Amicus Curiae** - *Mark K. Harder, chair.* No report.
- 2. **Continuing Education & Annual Probate Institute** - *Nancy L. Little, chair.* No report.
- 3. **Section Journal** - *Nancy L. Little, chair.* No report.
- 4. **State Bar Journal** - *Sebastian V. Grassi, Jr., chair.* No report.
- 5. **Pamphlets** - *Ellen Sugrue Hyman, chair.* No report.

6. **Electronic Communication** - *John R. Dresser, chair*. No report
7. **Committee on Special Projects** – *Amy N. Morrissey/Richard J. Siriani, Co-Chairs*

C. Legislation and Lobbying

1. **Legislation** - *Harold Schuitmaker and John R. Dresser, co-chairs*: Attorney Daniel P. Marsh reported on the Uniform Power of Attorney Act Committee. There was discussion regarding pending legislation. It was agreed that further telephone conferences would be scheduled to discuss the status of that legislation and then to come back to Council to discuss how the Council wishes to proceed.
2. **Michigan Trust Code** - *Mark K. Harder, chair*: Mark K. Harder began his discussion of the Michigan Trust Code. Mr. Harder moved to adopt Section 105 as proposed by the Committee. That motion was supported by Lauren M. Underwood and was passed.

Section 105 – Mr. Harder moved to adopt Section 105 as proposed by the Committee. That motion was supported by Lauren M. Underwood and was passed.

Section 813- Mark K. Harder moved to adopt Section 813 as proposed by the Committee. That motion was supported by Lauren M. Underwood and was passed.

Section 603 – Mark K. Harder moved to adopt Section 603 as proposed by the Committee. That motion was supported by Marilyn A. Lankfer and was passed.

Section 808 - Mark K. Harder moved to adopt Section 808 as proposed by the Committee. That motion was supported by Teresa S. Sullivan. This Section related to the role of a trust protector as well as incapacity or settlor. These issues drew some concern on the part of the Council and, as a result, were sent back to Committee without a vote on passage.

Section 411 – Mark K. Harder moved for adoption of Section 411 in the form proposed by the Committee. Lauren M. Underwood supported the motion and it was passed.

Section 414 – Mark K. Harder moved to adopt Section 414 in the form proposed by the Committee. George W. Gregory supported the motion. A motion to amend was made by Teresa S. Sullivan which would have increased the presumptive amount from \$50,000 to \$100,000. Daniel E. Cogan supported Ms. Sullivan’s motion. That motion to amend failed. Mark K. Harder accepted a friendly amendment requirement for a specified 63 day notice period which friendly amendment was accepted by Mr. Gregory and the Section then passed in the form proposed by the Committee with the 63 day notice period but without the changes requested by Ms. Sullivan.

Section 417 – Mark K. Harder moved for the adoption of Section 417 in the form proposed by the Committee. Teresa S. Sullivan supported the motion and it was passed.

Section 705 – Teresa S. Sullivan moved for the adoption of Section 705 in the form proposed by the Committee. Daniel E. Cogan supported the motion and it was passed.

Section 706 – Mark K. Harder moved for the adoption of Section 706 in the form proposed by the Committee. Harold Schuitmaker supported the motion. A friendly amendment was accepted by Mark K. Harder and Harold Schuitmaker to change the word “consistent” to “not inconsistent”. A motion by Shaheen I. Imani failed for support and the initial motion passed with the friendly amendment.

Section 103 – Mark K. Harder then lead the group through the definitions provisions in Section 103 with motions on each term that was presented.

Mark K. Harder moved for the adoption of the definition of the word “action” as proposed by the Committee. This was supported by Teresa S. Sullivan and the motion was passed.

Mark K. Harder moved for the adoption of ascertainable standard as proposed by the Committee. This was supported by Marilyn A. Lankfer and the motion was passed.

Mark K. Harder moved for the adoption of the definition of beneficiary as proposed by the Committee. This was supported by Marilyn A. Lankfer and the motion was passed.

Mark K. Harder moved for the adoption of “charitable trust” as proposed by the Committee. This was supported by Marilyn A. Lankfer and the motion was passed.

Mark K. Harder moved for adoption of the position of the Committee that the word “Conservator” not be defined in the Trust Code. Marilyn A. Lankfer supported the motion and the motion was passed.

John R. Dresser moved for the adoption of the definition of “environmental law” as proposed by the Committee. This was supported by J. David Kerr and the motion was passed.

W. Josh Ard moved to support the position in the Committee that the term “guardian” not be defined in the Trust Code. This was supported by Daniel E. Cogan and the motion was passed.

Lauren M. Underwood moved for the adoption of the term “interests of the beneficiaries” as proposed by the Committee. Teresa S. Sullivan supported the motion and the motion passed.

Discussion followed regarding the use of the term “jurisdiction” and as a result of the issues that arose during that discussion it was agreed that this question would be referred back to the Committee for further consideration.

Mark K. Harder moved to support the Committee’s recommendation that the Trust Code not define the term “person”. Teresa S. Sullivan supported that motion and that motion passed.

Mark K. Harder moved for the adoption of the definition of “power of withdrawal” as recommended by the Committee. This motion was supported by Teresa S. Sullivan and that motion was passed.

Mark K. Harder moved to support the Committee’s recommendation that the term “property” not be defined in the Trust Code. This motion was supported by Teresa S. Sullivan and that motion was passed.

Mark K. Harder moved to support the definition of the term “qualified trust beneficiary” as recommended by the

Committee. This motion was supported by Teresa S. Sullivan and that motion was passed.

3. **Statute of Repose** - *John A. Scott*: No report

D. Ethics, Professionalism and Standards

1. **Ethics** - *Marilyn A. Lankfer, chair*: No report
2. **Unauthorized Practice & Multidisciplinary Practice** - *Thomas F. Sweeney, chair*: No report
3. **Specialization and Certification** - *Shaheen I. Imami and Richard A. Shapack, co-chairs*:
4. **Practice Management** - *Richard J. Siriani, chair*: No report.

E. Administration of Justice

1. **Contested and Uncontested Probate Proceedings** – *Amy N. Morrissey, chair*: No report.
2. **Uniformity of Practice** - *Sebastian V. Grassi, Jr. and Joan Von Handorf, co-chairs*: No report.

F. Practice Issues, Related Areas & Liaisons

1. **Charitable Giving/Exempt Organizations** - *Robin D. Ferriby, chair*.
2. **Estate Gift Tax** - *George W. Gregory, chair*: No report.
3. **Real Property Tax Issues** - *George W. Gregory, chair*.
4. **Guardianships and Conservatorships** - *Douglas G. Chalgian, chair*: No report.
5. **Business Law and Business Section Liaison** - *John R. Dresser, chair*: John R. Dresser moved to support modifications to MCL556.123, MCL566.31 and MCL566.131. This was supported by Teresa S. Sullivan and the motion was passed with the understanding that the Creditor Committee of the Business Law Section would also be consulted with respect to the implications of these changes.

6. **Court Rules and Forms** - *Harold Schuitmaker and Joan Von Handorf, co-chairs*: No report.
7. **Elder Law/Elder Law Section Liaison** - *Josh Ard*: No report.
8. **Family Law/Family Law Section Liaison** - *Patricia M. Ouellette*: No report.
9. **Real Property Law/Real Property Section Liaison** - *Richard Shapack*: No report.
10. **Tax Section Liaison** – *Lorraine F. New* : No report.
11. **State Bar Liaison** - *Francine Cullari*: No report.
12. **Trust/Michigan Bankers Association Liaison** - *Daniel E. Cogan*: No report.
13. **Michigan Probate Judges** – No report.

IX. Other Business:

X. Hot Topics:

XI. Adjournment – The Joint Meeting of the Probate and Estate Planning Council and Committee on Special Projects was adjourned at 11:30 a.m.

Respectfully submitted,

Douglas G. Chalgian