

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

**January 14, 2017
Lansing, Michigan**

Minutes

I. Call to Order

The Chair of the Section, James Steward, called the meeting to order at 10:26 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
Robert B. Labe
Michael G. Licherman
Katie Lynwood
Richard C. Mills
Nathan R. Piwowarski
David L.J.M. Skidmore
Nazneen H. Syed
Geoffrey R. Vernon
Nancy H. Welber

A total of 19 council members and officers were present, representing a quorum.

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

Mark E. Kellogg
Raj A. Malviya
Melisa M.W. Mysliwiec
Lorraine F. New

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:

None.

E. Others in attendance:

Becky Bechler
Ryan P. Bourjaily
Jessica S. Brigman
Susan Chalgin
John Dresser
Daniel Hilker
Joann Kline
Ryan Mills
Jeanne Murphy
Kurt Olson
Patricia Oullette
Ken Seavoy
Mike Shelton
James Spica
Amy Rombyer Tripp
Joe Viviano

III. Minutes of the December 17, 2016 Meeting of the Council

The minutes of the December 17, 2016, 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, taking into account a proposed change to the wording of one resolution. 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.

V. Chairperson's Report – James Steward

The Chair's report was attached to the meeting materials.

Mr. Steward expressed concerns about SB 270 regarding jurisdiction for guardianships and conservatorships. Mr. Steward referred this to the Guardianship, Conservatorship, and End of Life Committee.

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

Mr. Vernon presented the report of the committee.

The Committee is working on a revision to the current rules governing certificates of trust. The committee will report the changes to the Council at a future meeting.

The Committee recommends changes to EPIC to make provisions gender neutral as a result of the holding in the *Obergefell* case. The Committee proposed changes to MCL 700.2519, 700.2801, and 700.2806. On a motion made and seconded, the Council adopted a resolution adopting a public policy position in favor of the proposed amendments. The vote was 19 in favor, 0 against and 0 abstaining.

VII. **Standing Committee Reports**

A. **Internal Governance**

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

Ms. Welber reported that the committee will begin work on an amendment to the bylaws to strike section 8.14, which relates to requirements for the section to consult with the Bar before undertaking printing projects. Ms. Welber has contacted the Bar and they stated that they don't know why this section is in the bylaws.

3. Awards – Amy N. Morrissey—no report.
4. Planning – Marlaine C. Teahan—no report.
5. Nominating – Thomas W. Sweeney—no report.
6. Annual Meeting – Marlaine C. Teahan—no report.

B. **Legislation and Lobbying**

1. Legislative Analysis and Monitoring Committee –Ryan P. Bourjaily

Mr. Bourjaily presented the committee report. There was an update from Ms. Bechler on the bills that the Council had worked on in 2016 and that were enacted into law, including laws related to funeral representatives, repeal of dower, and probate appeals.

The committee is currently looking at bills that would enact the Uniform Voidable Transfers Act. They will be submitting report with proposed changes to the bills, especially in light of the Qualified Dispositions in Trust Act enacted last year.

Ms. Teahan pointed out that HB 4021 was recently introduced. This bill would allow a probate court to approve a petition for guardianship of a person, that would take effect on the person's 18th birthday, as long as the person is at least 17 1/2 at the time of the petition. The committee will take a look at that bill. Judge Jaconette reported that he believes the Probate Judges Association will oppose the bill.

2. Legislation Development & Drafting Committee – Nathan R. Piwowarski

Mr. Piwowarski presented the report of the committee.

The committee has been working on the modifications to the current certificate of trust requirements, which were presented to the Committee on Special Projects.

The committee is looking at the several issues related to the interaction between trust administration and related probate proceedings (e.g., notice issues). They will be examining whether some of the changes can be made through court rule amendments rather than statutory changes.

The committee decided that there would be no changes made to the existing *in terrorem* provisions in EPIC.

The committee is examining the recently proposed adoption of the Uniform Voidable Transfers Act. They have identified three provisions that will possibly need revision.

The committee is looking at issues related to trust protectors.

They are examining whether the provisions in EPIC that contain cost-of-living adjustments should be revised. In some cases, the existing floor should be raised. In addition, some amounts in EPIC that are not currently indexed should be indexed (e.g., thresholds for establishing guardianships and conservatorships). They are looking for input from the MPJA as they work on this project.

The committee will be looking at ways to approach a fix to EPIC as a result of the *Jajuga* case, but taking into account the resistance to the changes that were proposed last year.

Ms. Bechler reported on the current state of the legislature. There have not been any committee assignments in the House yet. It's been a very slow start to the legislative season. She is working at setting up a meeting with Right to Life on the ART proposals.

Ms. Mitchell reported that the ad hoc committee on legislative drafting is still working on possible proposals relating to attorneys drafting estate planning documents that benefit themselves, in light of the *Mardigian* case.

3. Insurance Legislation Ad Hoc Committee – Geoffrey R. Vernon

Mr. Vernon reported on behalf of the committee. SB 1010 died in the last legislature. They will be working on a new bill this year.

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

Ms. Welber reported that the committee will be meeting with Right to Life to discuss the proposed legislation. They hope to report back next month.

C. Education and Advocacy Services for Section Members

1. Amicus Curiae – David L.J.M. Skidmore—no report.
2. Probate Institute – Marguerite Munson Lentz

Ms. Lentz reported that the Institute will be held May 18-20 in Acme and June 16-17 in Plymouth. Registration is now open.

3. State Bar and Section Journals – Richard C. Mills

Mr. Mills reported that the next issue of the Probate Journal is on track. They are looking for submissions, especially on new legislation. They would like to reactivate a column on legislative developments in the Journal. Mr. Steward will include discussion in the Chair's column about the Council's current legislative work.

4. Citizens Outreach – Melisa M.W. Mysliwiec – no report
5. Electronic Communications – Michael G. Licherman—no report.
6. Membership – Joseph J. Viviano

Mr. Viviano reported that the committee will be sending a welcome letter to new section members (and possibly to all new members of the bar).

D. Ethics and Professional Standards

1. Ethics & Unauthorized Practice of Law– Katie Lynwood

Ms. Lynwood reported that the UPL committee of State Bar is putting together a presentation on "Who Should You Trust?". They are just starting to assemble materials. They will be needing volunteers to do presentations at various sites around the state.

E. Administration of Justice

1. Litigation, Proceedings, and Forms – David L.J.M. Skidmore

Mr. Skidmore reported on a Supreme Court order that is proposing an amendment to MCR 9.108 and attorney grievance procedures. The proposed change provides that the attorney grievance commission can seek an injunction against an attorney's continued practice of law when an allegation is made against an attorney. The Committee approves the change, but feels that the proposal is not well written.

Mr. Skidmore moved that the Council take a public policy position in support of the proposed amendment, with changes to the wording suggested by the committee. The motion was seconded. Mr. Skidmore will draft the proposed response which will then be forwarded to the Supreme Court on behalf of the Council.

The council adopted the resolution with a vote of 19 in favor, 0 opposed, and 0 abstaining.

Ms. Teahan reported on probate appeals rules subcommittee:

The committee has prepared a response to ADM 2016-32, which includes suggested changes to the proposed amendments to the court rules governing probate appeals. The committee's comments and the proposed changes will be forwarded to the Bar, which will consider them and may then forward them to the Supreme Court. Ms. Teahan moved that the Council adopt a public policy provision supporting the proposed comments and suggested changes to the draft court rules. The motion was seconded.

The Council adopted the resolution with a vote of 19 in favor, 0 opposed, and 0 abstaining. Ms. Teahan will prepare a letter for Mr. Steward's signature that can be forwarded to the State Bar.

F. Areas of Practice

1. Real Estate – Mark E. Kellogg – no report.
2. Tax Committee – Lorraine F. New – no report.
3. Charitable and Exempt Organization – Christopher J. Caldwell—no report.
4. Guardianship, Conservatorship, and End of Life Committee – Rhonda M. Clark-Kreuer—no report.

VIII. Other Reports

A. Liaisons

1. Alternative Dispute Resolution Section Liaison – Milton J. Mack, Jr. —no report.
2. Business Law Section Liaison – John R. Dresser

Mr. Dresser reported that the Business Law Section is preparing a strategic plan that will be presented to the Business Law council in March.

3. Elder Law and Disability Rights Section Liaison – Amy Rombyer Tripp

Ms. Tripp reported on *In re Gurney, French, Ketchum & Rasmer*, consolidated estate recovery case currently pending in the Michigan Supreme Court. There is also a case pending in the Michigan Court of Appeals dealing with sole benefit trusts. Mr. Steward argued the case yesterday. There will be further reports when the cases are decided.

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

5. ICLE Liaison – Jeanne Murphy—no report.
6. Law Schools Liaison – William J. Ard—no report.
7. Michigan Bankers Association Liaison – Nazneen Syed —no report.
8. Michigan Probate Judges Association Liaisons – Hon. Judge David M. Murkowski, Hon. Michael L. Jaconette

Judge Jaconette let the Council know that he would help facilitate getting things before the MPJA if the Council needs input. He is now on the executive board of MPJA.

9. Probate Registers Liaison – Rebecca A. Schnelz—no report.
10. SCAO Liaisons – Constance L. Brigman, Michele C. Marquardt, Rebecca A. Schnelz—no report.
11. Solutions on Self-Help Task Force Liaison – Kathleen M. Goetsch—no report.
12. State Bar Liaison – Richard Siriani – no report.
13. Taxation Section Liaison – George W. Gregory – no report.

IX. Other Business

Detroit Mercy Law School is looking for volunteer attorneys to meet with select new law graduates who are beginning new practices.

X. Hot Topics

XI. Adjournment

The meeting was adjourned by Chairperson James Steward at 11:39 am.