

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

June 9, 2012
University Club
Lansing, Michigan

Minutes

1. Call to Order

The Chair of the Section, George Gregory called the meeting to order at 10:20 a.m.

2. Attendance

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

George Gregory, Chair	Meg Lentz
Amy Morrissey, Secretary	Hon. Darlene O'Brien
Shaheen Imami, Treasurer	Pat Ouellette
Josh Ard	Rebecca Schnelz
Chris Ballard	Robert Taylor
George Bearup	Marlaine Teahan

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

Mark Harder	Hon. David Murkowski
Tom Sweeney	Jim Spica
Susan Allan	Jim Steward
Connie Brigman	Ellen Sugrue-Hyman
David Kerr	Rob Tiplady
	Nancy Welber

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

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

Doug Chalgian	Nancy Little
Phil Harter	Mike McClory

E. Others in Attendance:

Rebecca Bechler	Michael Lebenbom
W. Jerry Byrd	Michael Lichterman
Lynn Chard	David P. Lucas
Rhonda M. Clark-Kreuer	Rick Mills
Keven DuComb	Jeanne Murphy
Kathleen Goetsch	Lorraine New
Jill Goodell	Neal Nusholtz
Carol Hogan	Shari L. Rolland Phillips
Steve Jones	David Skidmore
Mark E. Kellogg	Serene Zeni

3. Internal Governance

A. Minutes of April 14, 2012 Meeting of the Council

Minutes of the April 14, 2012, meeting of the Council had been previously distributed for the meeting. Upon motion by Meg Lentz with support from Shaheen Imami, the minutes were approved.

B. Treasurer Report

Shaheen Imami discussed the financial reports for March 31, 2012 and April 30, 2012, previously distributed with the Agenda for the meeting (**Attachment 1** to the meeting materials). Mr. Imami indicated that the fund balance as of April 30, 2012, was approximately \$245,902. Upon motion by Pat Ouellette, with support from Marlaine Teahan, the Treasurer's Report was accepted.

C. Chairperson's Report

George Gregory reported that Gail Anderson will serve as our Section's liaison to the Real Property Law Section.

Mr. Gregory thanked Kathleen Goetsch for attending the 3rd Annual Justice Initiatives Summit – Solutions on Self Help and submitting a report.

Mr. Gregory reported that House Bills 5154 (Uniform Principal and Income Act) and 5237 (estate tax) both came out of Senate finance committee.

D. Standing Committee Reports

1. Budget

Shaheen Imami reported that the Section budget had been updated to reflect Council approval of leadership conference approved at a prior Council meeting.

2. Nominations

A Report of the Nominations Committee including a slate of Council Members and Officers for the 2012-13 fiscal year was submitted by the Nominations Committee and distributed prior to the meeting and is incorporated by reference (**Attachment 2** to the meeting materials). Upon motion by Marguerite Lentz with support from Shaheen Imami, the report of the Nominations Committee was accepted and the slate approved by Council. There were no nominations from the floor.

3. Committee on Special Projects

Pat Ouellette reviewed the Specialization Committee's work (see **Attachment 3** of the meeting materials). Marlaine Teahan reported that CSP will continue review of the Specialization Committee's work in September.

Lynn Chard provided some background on specialization; some states are governed by their state bar association and others by the state supreme court. Our Section committee has suggested that our Supreme Court govern this because they have the ability to enforce the rules. There are rules that govern the certification overall, then separate rules for implementation and details. The certification boards consist of members of the legal profession only.

CSP discussed the fiduciary exception to the attorney-client privilege and case law finding that discovery was permitted for communications with trustee during the course of administration but once the breach of fiduciary issue arises, the communications between the attorney and the client/fiduciary was privileged. Mr. Gregory appointed an ad hoc committee to review the statutes and court rules of Michigan and other states and make a recommendation to the Council as to whether Michigan should have legislation or a change in court rule in this area. Committee Members are as follows: George Bearup (Chair), David Skidmore, Kal Goren, Shaheen Imami, Serene Zeni, and Mike McClory.

Website issues were also discussed by CSP.

4. Legislation

George Bearup reported on the status of legislation in other states on tenancies by the entireties and creditor protection for real property held in trusts. Mr. Gregory appointed the following members to form an ad hoc committee to research and make recommendation: Mark Kellogg (Chair), David Lucas, Rick Mills, Mike Lichterman, Gail Anderson and Rhonda Clark.

Josh Ard reported that the repository for advance care directives was enacted, i.e., the Peace of Mind Registry; the registry is run by private registry company that advocates organ donation. Doctors and hospitals are immune from liability if they rely on the Registry.

5. Probate Institute

There are approximately 300 people registered for Plymouth and a very large attendance in Acme. For future Institutes, ICLE is considering audio taping some of the sessions, constructing some advanced and basic sessions during off time, and introducing more interactive sessions and mentoring opportunities; perhaps a panel of probate judges.

6. Section Journal

Nancy Little reported that an upcoming Journal issue will have article on estate planning and employee benefits.

7. Listserve

Section members are now receiving a message to join the Section listserve when they join the Section.

8. Ethics

There is an Opinion on virtual offices coming out soon, but it is very fact specific. The SBM is looking at the ownership by attorneys of subsidiaries operating functions of law office, which, if performed by a non-lawyer would not be the unauthorized practice of law; also exploring law firms offering tax services.

9. Unauthorized Practice of Law (UPL)

The UPL committee will look into the new Peace of Mind Registry and the creation of forms. Bob Taylor reported that on August 1, the SBM UPL Committee, in conjunction with our Section and the Elder Law and Disability Rights Section, and with the help of attorney volunteers, will put on informational seminars for senior citizens in various geographic locations in Michigan, on estate planning decisions and the perils of trust mills. Speak with Mr. Taylor if you would like to participate. David Kerr volunteered.

10. Court Rules/Forms

Marlaine Teahan reported that on May 24, 2012, changes to MCR 1.109 approving the use of electronic signatures and notarization became effective immediately pursuant to Supreme Court Order 2006-47,

Ms. Teahan also reported that the Supreme Court granted an extension of time until September for our Section and others to submit a brief concerning the Court's Constitutional power to make the proposed rule change in MCR 5.801. The Appellate Practice Section and the MPJA also concur with the rule change. There are some who believe that a legislative change, rather than a court rule

change, is needed. It was considered that the Section communicate with the Michigan Legislature about revising the Revised Judicature Act, specifically Sections 861 and 863.

E. Ad Hoc Committees

1. Updating Michigan Estate/Trust Law

Michael Lichterman reported that the Committee is on track to present a proposal in October.

2. Online Guidance for Non-Lawyers

Kathleen Goetsch reported on the 3rd Annual Justice Initiatives Summit – Solutions on Self Help; her report was distributed prior to the meeting (**Attachment 7** to the meeting materials). The project has an interest in domestic, consumer and landlord tenant matters; helping pro per clients. There are plans to publicly launch the self-help website soon.

3. Power of Attorney

Marguerite Lentz reported that SB 92 is now law - PA 141.

4. Transfer Tax

Lorraine New reported that there are fewer IRS attorneys handling estate tax audits – one attorney for Michigan – Kathleen Heffner.

5. Guardianships, Conservatorships and End of Life

Michael Lebenbom reported on the guardians and DNR bills currently under review as circulated prior to the meeting (**Attachment 10** to meeting materials). He noted that DNRPA does not current apply in nursing facilities. The legislation seeks to amend a section of EPIC and the DNRPA; specifically, the amendment to MCL 5314 would permit a guardian to sign a DNR with certain requirements to the extent ordered by the court. Regarding DNRPA, considerable changes are proposed to the form previously presented, but mostly clean-up of typos. There are notable changes concern actual notice and the need to track the forms. The Committee attempted to mesh DNRPA and EPIC changes to allow guardians to sign DNR in facility setting.

Nancy Little moved to support changes to DNRPA and guardians bills as drafted by the Committee and circulated prior to the meeting (attached to the minutes) and with authority in the Committee to make non-substantive changes. Josh Ard supported the motion. A hand vote of Council members present was taken: 12 in support; 0 opposed; 0 abstaining; 11 absent from vote.

Rhonda Clark reported that a final Committee draft of the family consent legislation should be ready in September. The topic of medical facility waivers was the only topic remaining for discussion.

F. Specialty Areas and Liaisons

1. ICLE

Web resources for Section members are available now. ICLE will run usage reports by end of July.

There are some items to be completed on the website. EPIC Q&A will be linked to the sourcebook; projected for Fall of 2013. All probate sourcebook owners will have access to EPIC Q&A. In the statutes, attorneys will be able to link to EPIC Q&A that relate to a particular statute.

Next phase of the Section website is to think about online “community” and interactivity. (eg. Web 2.0; social media.). Currently doing some of this for ICLE partners; categorizing posts by those with most frequently hits. The ICLE Community will be another area of website with discussions, blogs, etc. The Section needs to be mindful of social networking policies of SBM. Mr. Gregory appointed the following to an ad hoc committee to explore the ICLE Community and issues of using ICLE blogs versus the listserv: Amy Morrissey (Chair), Nancy Little, Marlaine Teahan, Shaheen Imami, Serene Zeni.

G. Adjournment

There being no other business brought before the Council, Marguerite Lentz moved to adjourn; George Bearup supported. The meeting was adjourned at 11:59 a.m.

Respectfully submitted,

Amy Morrissey
Secretary