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

June 13, 2015
Lansing, Michigan

Minutes

I. Call to Order – The meeting was called to order by the Chair at 10:15 a.m.

II. Attendance.

A total of 3 officers and 14 members of the Council were present, representing a quorum.

A. The following 3 officers of the Council were in attendance:

Amy N. Morrissey, Chair
Marlaine C. Teahan, Secretary
Marguerite Munson Lentz, Treasurer

B. The following 14 members of the Council were in attendance:

Susan M. Allan
Christopher A. Ballard
George F. Bearup
Constance L. Brigman
Hon. Michael L. Jaconette
Mark E. Kellogg
David P. Lucas
Michele C. Marquardt
Richard C. Mills
Lorraine F. New
Patricia M. Ouellette
David L.J.M. Skidmore
James P. Spica
Geoffrey R. Vernon

C. The following officers and members were absent with excuse:

Shaheen I. Imami, Chair Elect
James B. Steward, Vice-Chair
W. Josh Ard
Rhonda M. Clark-Kreuer
Raj A. Malviya
Nancy H. Welber

D. The following officers and members were absent without excuse: None

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

George W. Gregory
Thomas Sweeney
Susan S. Westerman
The following guests were in attendance:

Becky Bechler
Christopher J. Caldwell
Kathleen Goetsch
Raymond A. Harris
J. David Kerr
Robert B. Labe
Michael G. Lichterman
Bradley C. Martin
Jeannine Murphy
Kurt A. Olson
Jessica M. Schilling
Nazneen H. Syed

III. Minutes of April 11, 2015 Meeting of the Council – Marlene C. Teahan

The minutes of the April 11, 2015 meeting were approved as submitted and will be posted online with the following attachments:

- Memorandum, April 10, 2015, Amy Morrissey, Chair of the Section to the P&EP Council, regarding Support of Solo and Small Firm Institute (referencing copy of email, March 10, 2015, Jeff Kirkey to Amy Morrissey, regarding Probate Section Sponsorship of the 2015 Solo & Small Firm Institute)
- Summary of Mediation in Probate Cases, written by Susan J. Butterwick, J.D. and Susan D. Hartman, J.D., provided by the Hon. Milton L. Mack, Jr., Liaison to the Alternative Dispute Resolution Section.

IV. Treasurer's Report – Marguerite Munson Lentz

The Treasurer's report, including a June 13, 2015 written report, Treasurer's financial report (March and April, 2015), and SBM reimbursement forms and instructions were provided as Attachment 2 of the June 13, 2015 Agenda, and can be found online. The State Bar of Michigan is requiring reimbursement forms to be submitted within 45 days of the date on which the expense occurs.

V. Chairperson's Report – Amy N. Morrissey

Ms. Morrissey's report is based in part on the Attachment 3 of the June 13, 2015 Agenda materials. In addition, Ms. Morrissey reported on the following items:

- The 55th Annual Institute in Traverse City in May had a great turnout with great speakers. Highlights included expanded vendor tables, the membership committee’s vendor table, membership survey, and social event hosted at Smith Haughey Rice & Roegge.
- The June 2015 ICLE agreement with the P&EP Section on Member Content has been finalized – a vote of Council is needed; SBM General Counsel Cliff Flood has approved. The contract's highlights were discussed. Motion by Amy Morrissey, support by Jim Spica; the vote was unanimous with no votes against and no abstentions. Ms. Morrissey will execute the contract.
9, 2015, pp 175-198. Mr. Sweeney reported on the article and provided the article to those in attendance. This article was also the foundation for an ICLE webinar on undue influence and was presented at the 27th Annual Spring Symposia, ABA Section of Real Property, Trust & Estate Law, April 2015. Plans also include a presentation in the Fall at the 41st Annual Notre Dame Tax & Estate Planning Institute.

- N. Little advised that Fred Rolf will be stepping down as editor of the Ethics column of the Section Journal. Anyone interested in writing that column should let Ms. Morrissey or Ms. Little know of their interest.
- Ms. Morrissey will be sending a letter to Chief Judge Talbot regarding our Section's willingness to help with probate and estate planning cases by the end of June and requests any input from Council members regarding the letter.
- Email dated May 27, 2015 from Jeff Kirkey to Ms. Morrissey regarding ICLE Experts in Estate Planning – approval for support of this program was discussed. It is requested that our Section contribute $4000. Motion in support by Ms. Morrissey, support from Mr. Spica; the vote was unanimous with no votes against, and no abstentions. The costs were also discussed as $195, with section members at $165. It will also be available as a webcast for 90 days after the presentation.

VI. Report of the Committee on Special Projects – Christopher A. Ballard

1. Review of SB 270. CSP recommends to council that it take a position to support SB 270 in concept but to move the language from Article 5 to Article 1 and to reflect that the intent is to expand the court’s jurisdiction instead of restrict the court’s jurisdiction. Motion includes granting authority to co-chairs of the Guardianship, Conservatorship and End of Life Committee, Rhonda Clark and Katie Lynwood, to modify the language in accordance with the position taken by Council, as outlined above. Vote taken: 17 for, 0 against, 0 abstentions.

2. Updating Michigan Law Committee – Geoffrey Vernon presented Senator Schuitmaker's proposed bill regarding pre-death probate litigation (Agenda, Exhibit D-1). Discussed who can file the petition and that while this is not currently included in the MTC, there is nothing in EPIC that would preclude a petition relative to approving a trust. Mr. Vernon suggests that we ask Sen. Schuitmaker to delay the submission of this bill so that we can consider it further. CSP recommended that it be sent back to Committee with the thought that it be taken up again at a future time.

VII. Committee Reports

B. Internal Governance

5. **Nominating – George W. Gregory**

A written report of the Nominating Committee was handed out and was discussed. [Attachment 3 of the Annual Meeting of the Section Agenda.] The Chair opened nominations from the floor for officers; hearing none, the nominations for officers were closed. The Chair opened nominations from the floor for council members; hearing none, the nominations for council members were closed. With no nominations from the floor for officers or council members, upon a motion of the Nominating Committee, the Committee's written report was accepted as the Nominations for officers and council members for the 2015-2016 council year. A vote on these nominations will be held in September.

6. **Annual Meeting – Shaheen I. Imami – No report.**

C. **Legislation and Lobbying**

1. **Legislation – William J. Ard**
   The June Report of Public Affairs Associates, pending legislation of interest to the Probate and Estate Planning Section was included in the Agenda materials as Attachment 4.

   Becky Bechler reported on many items, including:
   - Sen. Schuitmaker willing to sponsor our version of digital assets;
   - Domestic asset protection – draft back before next Friday;
   - Probate appeals will have comments given to LSB this week; and
   - Regarding SB 270, she will get with sponsor this week.

2. **Updating Michigan Law – Geoffrey R. Vernon – The Committee will continue on pre-death probate litigation and will get back with CSP on this in September. Mr. Vernon also reported on a call from Mr. Siriani regarding MCL 700.5102, facility of payment or delivery. Discussion ensued that the $5,000 limit in that section should be increased and cola adjusted. Ms. Welber has a list of what should be updated as far as technical corrections for EPIC and Mark Harder has a list of needed updates for the MTC.**

3. **Insurance Ad Hoc Committee – Geoffrey R. Vernon – no report.**

4. **Artificial Reproductive Technology Ad Hoc Committee – Nancy H. Welber. Will be taken back up in the fall.**
Education and Advocacy Services for Section Members

1. Amicus Curiae – David L. Skidmore

The Committee's report included Agenda Attachment 5 and 6. Discussion held on the Application for Consideration of Amicus Curiae, In re Filibeck Estate. Discussed the facts of the case and the recommendation that amicus committee wants to hire a firm to research the issue and give a recommendation to be circulated electronically. $5000 to be approved now but then up to $10,000 if we approved the position of the appellate firm’s recommendation. Mr. Skidmore explained that the case's impact is unique because of the growing practice of fundraising, crowdsourcing, and issues such as intervivos gifts and constructive trusts. Motion by Mr. Skidmore, support from Mr. Spica. Vote: 16 For, 1 Against, no abstentions. Motion carries.

Discussion on In re Ketchum, oral request for consideration of the filing of an amicus brief by Attorney Charlotte Shoup. This is an estate recovery case. Ms. Shoup will file a formal application and the Committee will make a recommendation.

2. Probate Institute – James B. Steward – no report

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

Mr. Mills' report included Attachment 7 of the June Agenda, June 8, 2015 Memorandum, Richard C. Mills, regarding Proposal from William S. Hein & Co. concerning the section Journal. Hein wants to publish our section’s journal online and will give 15% of proceeds to the Section; the journal would be published as a whole and not parse out the articles. Mr. Mills discussed this with Ms. Little. Mr. Mills recommends that this be approved and that the contract be submitted for review by Cliff Flood at the SBM. This contract will be reviewed by Mr. Flood and provided in the September materials for review and a vote by Council.

4. Citizens Outreach – Constance L. Brigman – Citizens Outreach Committee Meeting June 3, 2015, see Attachment 8 of the June 2015 Agenda. Ms. Brigman will discuss this at our next meeting and will discuss the contract with the SBM. Discussion was held on the update and revision of the brochures, including publishing agreements, various notices to be included on the materials, permissions to reprint, and coordination with the State Bar. In addition, the copyright was secured on the brochure – the patient’s guide.


E. **Ethics and Professional Standards**

2. Unauthorized Practice of Law & Multidisciplinary Practice – Patricia M. Ouellette – No report.

F. **Administration of Justice**

1. Court Rules, Procedures and Forms – Michele C. Marquardt

   Three issues were discussed:
   - Whether court rules should be changed regarding applications for amicus filings and who may file them. This issue was referred to the Amicus Committee.
   - Ms. Morrissey referred to the Committee to review court forms to provide for a check box to allow a Judge to check a box allowing access to restricted accounts to pay for attorney fees.
   - The Committee has review the Q&A from the Peace of Mind Registry website and has concerns. Upon a motion by the Committee, with support of Ms. Morrissey, Council unanimously approved a motion for the Committee to draft a letter for Ms. Morrissey's signature outlining the various issues with the Q&A, providing language that is consistent with EPIC.

2. Fiduciary Exception to Attorney Client Privilege Ad Hoc Committee – George F. Bearup – No report.

G. **Areas of Practice**

1. Real Estate – George F. Bearup reported on Attachment 10, June 2015 Agenda, June 2, 2015, Email, David Fry to George Bearup, et. al, regarding proposed amendments to MCL 211.27a. Mr. Bearup reported that Mr. Fry reached out to the sponsor of this bill. In addition, Mr. Bearup receives weekly requests for clarification from members of the Bar. The issue at stake is that the legislation requires a delicate balance in clear drafting and maintaining revenue for state.

2. Transfer Tax Committee – Lorraine F. New. A Tax Nugget, located at Attachment 11, June 2015 Agenda, was presented by Robert Labe, "Another Crummey Loss for the Internal Revenue Service." Mr. Labe gave a brief report regarding the issues raised in the *Mikel v. Commissioner T.C. Memo 2015-64* (April 6, 2015) case and his written report.

4. Guardianship, Conservatorship, and End of Life Committee – Rhonda M. Clark-Kreuer. Raymond Harris reported for committee on SB 270 during the CSP. As part of the report of the Chair of CSP, a vote was taken as outlined above in the report on CSP. A public policy report will be filed with the SBM.

H. Liaisons

1. Alternative Dispute Resolution Section Liaison – Hon. Milton L. Mack, Jr. – No report.


3. Elder Law and Disability Rights Section Liaison – Amy R. 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 reported on the June 2015 events of the Tax Section as outlined in Attachment 12, June 2015 Agenda.

Mr. Gregory also reported on Attachment 13, June 2015 Agenda, Draft RAB 2015-XX regarding Taxability of Income to Estates, Trusts or Beneficiaries, comments due June 22, 2015. Bob Joslyn will be working on this with George. In the Fall of 2014, we reviewed another version of this RAB. This version could use some clarification; Mr. Gregory thinks there is too much room for interpreting the examples. 2 years ago Treasury put in MCL 206.36. If this is a positive adjustment this makes some sense. The RAB is consistent with the statute but it is contrary to many standards of trust accounting. Mr. Gregory agrees with the narrative but the allocation in the examples are limited. He would like to see more examples. Ms. New and Mr. Gregory pointed out that the last RAB that indicated that an out of state resident would be taxed. Bob Joslyn and Mr. Gregory would like to comment on this to Treasury re typos, examples are
not clear, pose new examples and clarify that if the individuals in the examples are Michigan residents or not. Mr. Gregory is still not happy and thinks there are constitutional issues involved. George will write a letter that will be circulated for an electronic vote by Council so that we can take a public policy position.

VII. Other Business

VIII. Hot Topics

IX. Adjournment. The chair adjourned the meeting at 11:57