

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

**June 24, 2017  
Lansing, Michigan**

**Minutes**

**I. Call to Order**

The Chair of the Section, James Steward, called the meeting to order at 10:20 am.

**II. Attendance**

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

James B. Steward  
Marlaine C. Teahan  
Marguerite Munson Lentz  
David P. Lucas  
George F. Bearup  
Christopher J. Caldwell  
Kathleen M. Goetsch  
Hon. Michael L. Jaconette  
Mark E. Kellogg  
Michael G. Lichterman  
Katie Lynwood  
Raj A. Malviya  
Richard C. Mills  
Melisa M.W. Mysliwicz  
Lorraine F. New  
Nathan R. Piwowarski  
David L.J.M. Skidmore  
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**

Christopher A. Ballard  
Robert B. Labe  
Nazneen H. Syed

**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:**

Robert D. Brower, Jr.  
George W. Gregory  
Amy N. Morrisey  
Tom Sweeney

**E. The following Liaisons to the Council were in attendance:**

James P. Spica

**F. Others in attendance:**

Ryan Bourjaily  
Neal Nusholtz  
Susan Chalgian  
Daniel S. Hilker  
Aaron Bartell  
Mike Shelton  
Mark DeLuca  
Christine Savage

**III. Minutes of the April 22, 2017, Meeting of the Council**

The minutes of the April 22, 2017, Meeting of the Council were attached to the combined Agenda for this meeting, posted on the Section's web page prior to the meeting. Nathan Piwowarski moved that the minutes be approved. 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' Treasurer's Report was attached to the combined Agenda. Mr. Lucas encouraged the timely submission of requests for reimbursement.

**V. Chairperson's Report – James Steward**

Mr. Steward delivered the report of the chair. Mr. Steward's written Chair Report was attached to the combined Agenda.

1. Mr. Steward reported that registration for the State Bar of Michigan's NEXT Conference is now open.
2. Mr. Steward reported on a notice from Michael J. McClory regarding filing and processing pleadings in Wayne County Probate Court.

3. Mr. Steward reported on *In re Estate of Marian I. Cary*, State of Michigan Court of Appeals No. 331287, unpublished, June 1, 2017. This case involved the reasonableness of fiduciary and attorney fees.

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

Mr. Vernon presented a summary of the committee report, and lead discussions regarding (i) *In re Estate of Jajuga*, regarding a testator’s right to exclude children from receiving the exempt property allowance; (ii) a memo to the Michigan Probate Judges Association regarding adjustments to the monetary thresholds in EPIC and related statutes, describing proposed increases in such thresholds; and (iii) electronic wills. Regarding electronic wills, the discussion focused on dealing proactively with any proposal for electronic will legislation, since other states have electronic wills statutes, and there is a need to assure protection for will makers, since there is likely to be pressure from electronic document services for recognition of electronic wills.

## **VII. Standing Committee Reports**

### **A. Internal Governance**

1. Budget – Christopher A. Ballard – no report.
2. Bylaws – Nancy H. Welber – Ms. Welber informed the Council that the Section’s Bylaws had been amended to delete Bylaws section 8.4, and that, as required, the Bylaws Committee would take further steps, such as submit the amendment to the State Bar Board of Commissioners for final approval.
3. Awards – Amy N. Morrissey—no report.
4. Planning – Marlaine C. Teahan—Ms. Teahan reported that she went to the State Bar leadership conference at Mackinac, that it was a good meeting with many State Bar Sections leaders, and that Probate Section is viewed as a leader in the Sections, providing good advice to other Sections on operating and supporting Section members.

Ms. Teahan informed the Council that there are several features of the State Bar website that can be useful for the Council and its committees, such as discussion boards and committee materials.

Ms. Teahan reported that she had attended a State of Michigan bill signing, and, at the bill signing, was told that there were certain lawmakers who were looking for legislation to sponsor, and she reported that the Council was encouraged to submit legislation. Mr. Steward stated that the procedure for submitting legislation has become much better, since it now involves electronic submissions. Mr. Steward encouraged Council committees to review the Council’s Biennial Plan of Work in this regard.

5. Nominating – Thomas W. Sweeney—Mr. Sweeney reported that the Nominating Committee, composed of the preceding three chairs of the Council, held various meetings. Mr. Sweeney reported that, pursuant to the Council’s Bylaws, the Chair Elect, Marlaine Teahan, will take office as Chair, without further action by the Council. Other Council officers will take their seats after their election at the Section’s annual meeting, commencing the immediately following meeting of the Council

Mr. Sweeney stated the Nominating Committee’s report, dated June 24, 2017, had been distributed to the Council. The Nominating Committee nominates the following individuals for the positions shown opposite their name:

As officers of the Council:

Chairperson Elect: Marguerite Munson Lentz  
Vice Chairperson: Christopher A. Ballard  
Secretary: David P. Lucas  
Treasurer: David L.J.M. Skidmore

For the Council for a second three-year term:

Hon. Michael L. Jaconette  
Mark E. Kellogg  
Raj A. Malviya

For the Council for an initial three-year term:

Michael G. Lichterman  
Kurt A. Olson  
Christine M. Savage

If David L.J.M. Skidmore is elected as Treasurer, the Committee nominates Angela M. Hentkowski to serve the balance of Mr. Skidmore’s term as a member of the Council, which ends with the annual meeting in 2018. Ms. Hentkowski will thereafter be eligible for election to two three-year terms as a member of the Council.

Mr. Steward stated that he had provided Council members with Ms. Hentkowski’s resume, and that the Council typically made an effort to have at least one Council member from the Upper Peninsula.

Mr. Steward asked for questions about the candidates, and there were no questions. Mr. Steward asked for nominations from the floor, and no nominations were made from the floor; Mr. Steward declared the nominations closed. Mr. Steward called the question on the Nominating Committee’s nominations. The Nominating Committee’s report and motion was approved on a voice vote with no nays and no abstentions. Mr. Steward declared those individuals elected.

6. Annual Meeting – Marlaine C. Teahan -- Ms. Teahan reported that the annual meeting of the Section will be held at MSU University Club in September, 2017, and that Ms. Teahan was working with the State Bar to have a presentation on the resources now available from the State Bar.

**B. Legislation and Lobbying**

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

Mr. Bourjaily reported that the Legislative Analysis and Monitoring Committee's primary efforts focused on HR 4684, relating to the visitation of a ward under guardianship, which was introduced by Rep. Lucido, which would amend EPIC 5306 to provide that the Court may appoint a limited guardian to supervise access by a relative. Mr. Bourjaily reported that the Uniform Law Commission has a uniform act, and the LAM Committee recommends that the Chair appoint someone from Council to make Rep. Lucido aware of the uniform act, and request that Rep. Lucido delay action on HR 4684. Ms. Lentz moved that Mr. Steward or his designee is authorized to contact Rep. Lucido on behalf of the Council, and request that action on HR 4684 be delayed. The motion was seconded, and approved on a voice vote with no nays and no abstentions. Mr. Steward designated Mr. Vernon to discuss the matter with Rep. Lucido (Mr. Vernon is a constituent of Rep. Lucido). Mr. Steward requested that the Council's Legislation Development and Drafting Committee help develop a proposal for this type of legislation. Mr. Gregory recommended that the LAM Committee discuss this legislation with the Council's lobbyist. Ms. Teahan reported that one of the members of the House Judiciary Committee is a former member of the Uniform Law Commission, and so is likely to be supportive of uniform acts.

Mr. Bourjaily reported that Enrolled House Bill 4613 related to establishing a commission to review funding for trial courts, and the Committee was reviewing this legislation to see how it would affect the Probate Courts, since there is no member of the Michigan Probate Judges Association to be appointed to such Commission. The LAM Committee recommends comment on the legislation, but otherwise determine the effect on the Probate Courts. Judge Jaconette stated that, since the basis for this legislation is the *Cunningham* case, a criminal law case relating to what may be charged in a criminal matter, it is not likely to have much effect on the Probate Courts, and that, while the legislation is on the agenda for the MPJA meeting, it is likely that the MPJA will not be interested in the legislation, since it appears to have little effect on the Probate Courts. Mr. Spica stated that the Council should support the MPJA. Mr. Gregory moved that the Council supports the MPJA if the MPJA determines that an MPJA member should be appointed to such Commission. The motion was seconded. Since this motion involved a policy position of the Council, Mr. Steward called for a show-of-hands vote. The motion was approved on a vote of 19 in favor, none opposed, and no abstentions.

Mr. Bourjaily reported that another matter that the LMA Committee considered was House Bill 4312, relating to authorization to sit for the Bar Examination for

graduates of certain law schools and admission to the Michigan Bar on reciprocity. Mr. Bourjaily reported that the State Board of Bar Examiners and SCAO had taken a position opposed to the legislation. Mr. Bourjaily reported that the legislation had been pulled from the House agenda for lack of votes. LMA Committee recommends to the Council that if 4312-type legislation be proposed again, that the Council oppose it. Mr. Piwowarski moved that the Council take no policy position on this matter, and that the Council does not request a written report from LMA Committee at this time. The motion was seconded. Mr. Spica spoke against the motion, stating that, since the legal profession is a particularly learned profession, it is essential that the Bar assure that its members are properly educated, and that the Bar should not give the impression that legal advice is fungible. Ms. Teahan stated that, with all of the changes in the manner in which the profession is practiced, for example, on the internet, it is sometimes difficult to determine whether someone is practicing law in Michigan. Ms. Goetsch moved to table Mr. Piwowarski's motion; the motion to table was seconded. The motion to table was approved on a vote of 13 in favor, 6 opposed, and no abstentions. Mr. Steward referred the matter back to the LMA Committee, and requested that the Committee confer with the Council'

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

Mr. Piwowarski reported that the LDD Committee is focusing on 7 topics:

- a. Adjustments to statutory exemptions and bonds. The Council discussed such adjustments, including whether there is a need for additional legislation regarding the Court's discretion on bonds, and the involvement of lawyers in bonding matters unduly increasing the costs to estates. Mr. Piwowarski moved that the Chair or the Chair's designee submit a memo to MPJA describing the LDD Committee's rationale for adjusting statutory exemptions and bonds. The motion was seconded. The motion was approved on a voice vote with no nays and no abstentions.
- b. Exempt property and the *Jajuga* case.
- c. Quiet trusts
- d. Interests rates on general bequests
- e. Standby guardians
- f. Limiting access to elders
- g. Revocation and termination of trusts

3. Ad Hoc Committee on Legislative Drafting and Legal Ethics – Sueann Mitchell – no report.

4. Insurance Legislation Ad Hoc Committee – Geoffrey R. Vernon – Mr. Vernon reported that the ILAH Committee was still looking for a sponsor for recommended legislation.

5. Assisted Reproductive Technology Ad Hoc Committee – Nancy H. Welber -- Ms. Welber reported that there are 2 sponsors for the recommended ART legislation, and that the ART Committee hoped that the recommended legislation would be introduced at the start of the next session. Ms. Welber expects that the proposed legislation will be referred to the Committee on family and children, and hoped that the legislation would be enacted by next December. Ms. Welber stated that, although her term on the Council was ending, she is willing to continue as Chair of the ART Committee.

6. Divided and Directed Trusteeship – James P. Spica -- Mr. Spica referred the Council to Attachment 4 to the Council agenda, and noted that an outline of the uniform act was included with the materials.

**C. Education and Advocacy Services for Section Members**

1. Amicus Curiae – David L.J.M. Skidmore -- Mr. Skidmore reported that the Amicus Curiae Committee is making no recommendations for funding, although there are parties seeking support from the Council. Ms. Teahan reported that, in the *Vansach* matter (which purports to limit the Probate Court’s jurisdiction, following the amicus funded by Council, the State filed a motion to respond to amicus; Ms. Teahan said that she was informed that such a filing is very rare.

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2. Probate Institute – Marguerite Munson Lentz -- Ms. Lentz reported excellent attendance at the Plymouth-site Institute, and that the exhibit area at the Institute was the largest ever. Ms. Lentz thanked all of their work on this matter.

State Bar and Section Journals – Richard C. Mills – Mr. Mr. Mills reported that the Spring, 2017 Probate Journal had been published. Mr. Mills encouraged the submission of articles for future issues. Mr. Mills reported that probate is scheduled as the theme issue for the December 2018 Bar Journal, but, to date, there are no proposed topics or authors scheduled.

3. Citizens Outreach – Melisa M.W. Mysliwicz -- Ms. Mysliwicz reported that the Citizens Outreach Committee is working on preparing a policy and procedure for accepting materials from outside groups for citizens outreach matters, and reported that there are still some brochures available.

4. Electronic Communications – Michael G. Lichterman—Mr. Lichterman reported that, in follow-up to the discussion at the April Council meeting, the Electronic Communications Committee has prepared a proposed Section Mailing

List Policy and a proposed Probate Section Mailing List Code of Conduct, which are included as Attachment 5 to the Agenda. Mr. Steward inquired regarding the use of “form” or “forum” in the third sentence of the third section of the Section Mailing List Policy. Mr. Steward stated that the phrase “suspension or termination” should replace the phrase “suspended or terminated in in the fourth line of the first paragraph of the Mailing List Code of Conduct. The EC Committee moved the adoption of the Policies, with the modification recommended by Mr. Steward. The motion was approved on a voice vote, with no nays and no abstentions.

5. Membership – Nicholas A. Reister – for Mr. Reister, Dan Hilker gave a report that the Membership Committee has a table in the exhibit hall of the Institute, and intends to have a table at the next Institute.

**D. Ethics and Professional Standards**

1. Ethics & Unauthorized Practice of Law– Katie Lynwood – Ms. Lynwood reported that she is on the State Bar’s Who Should You Trust Committee. The date of the Who Should You Trust presentations is October 11, and that Committee is asking for volunteers. To participate, lawyers sign up and present; all of the materials are already prepared, and presenters must follow the prepared program. Sites selected after requests for community centers to volunteer space and time. Ms. Lynwood will provide Who Should You Trust communications examples to Mr. Steward. Ms. Teahan inquired about more venues, since her sense is that lawyers are willing to present, but there are no venues in which to present; Ms. Lynwood will check into that matter.

Ms. Lynwood had no update on the “first responders” presentation matter, but will provide information as she obtains it.

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**E. Administration of Justice**

1. Litigation, Proceedings, and Forms – David L. Skidmore – no report

Ms. Teahan reported that she is the Chair of the subcommittee on probate court rules, which issued a report on June 21. She reported that a hearing was held, and that several individuals from out-of-state attended the hearing; those individuals

expressed complaints about the lack of procedures for Probate Court appeals, so they did not understand the new legislation regarding probate appeals.

Ms. Teahan reported that most forms changes are developed by the committee, then are presented to the Court of Appeals. Priority is being given to appeals regarding guardianship and mental health matters, and Ms. Teahan requested feed-back from the Council and Section members. Ms. Teahan noted that changes can be made, and that it appears that the Court of Appeals is willing to make additional changes. Ms. Teahan reported that the proposed forms changes have been posted to the State Bar Section website. Ms. Teahan expressed appreciation that Judge Murkowski started the process of sending appeals of Probate Court matters directly to the Court of Appeals.

#### **F. Areas of Practice**

1. Real Estate – Mark E. Kellogg – Mr. Kellogg reported that the Committee is working on modifying the uncapping statute, and that Sen. Schuitmaker has agreed to sponsor legislation. Mr. Kellogg intends to have a draft of a bill for Council review in September. Mr. Gregory noted that such legislation could affect a number of areas of the law, and encouraged Mr. Kellogg to reach out to other Sections, including, for example, real estate and tax.

2. Tax Committee – Lorraine F. New -- Ms. New's Tax Nugget, regarding payment of user fees at pay.gov and a new portability Revenue Procedure.

3. Charitable and Exempt Organization – Christopher J. Caldwell – Mr. Caldwell reported that the Charitable and Exempt Organization Committee intends to work on the Supervisor of Trustees for Charitable Purposes Act, and that a member of the Attorney General's office, Will Broomfield, is acting as liaison to the Attorney General.

4. Guardianship, Conservatorship, and End of Life Committee – Rhonda M. Clark-Kreuer – for Ms. Clark-Kreuer, Ms. Lynwood reported that an email was sent to Judge Murkowski regarding the guardianship matter discussed previously by the Council. Judge Jaconette reported that the matter was on the agenda for MPJA.

### **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—no report.

3. Elder Law and Disability Rights Section Liaison – Amy Rombyer Tripp—no report.

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 H. Syed—no report
8. Michigan Probate Judges Association Liaisons – Hon. Judge David M. Murkowski, Hon. Judge Michael L. Jaconette—no report. Judge Jaconette reported that he would not be able to attend the Council’s September 9 meeting because of the MPJA meeting. Judge Jaconette will report back to Council, and thanks all for memos regarding positions.
9. Probate Registers Liaison – Rebecca A. Schnelz—no report
10. SCAO Liaisons – Constance L. Brigman, Michele C. Marquardt, Rebecca A. Schnelz—no report. For the liaisons, Ms. Teahan reported that June 30 is the cutoff date for comments to proposed amendments to the Court rules; SCAO will accept emails as comments. Ms. Teahan and Mr. Steward will talk to the 3 liaisons regarding continuing as Council liaisons to SCAO; Ms. Schnelz has indicated a desire to continue participating, but she will drop off, if needed, since she will still attend meetings; if she ceases to be a Council liaison, the Council can have 3 individuals as liaisons to SCAO. There is only one meeting per year, and Ms. Teahan encourages active participation from the Council.
11. Solutions on Self-Help Task Force Liaison – Kathleen M. Goetsch—no report.
12. State Bar Liaison—Richard J. Siriani – no report.
13. Taxation Section Liaison – George W. Gregory – Mr. Gregory reported that the Taxation Section is working on its “Tax Bootcamp.” The Section is active in social media matters. The Section is sponsoring a Tax Court lunch in September, at which a Tax Court Judge will be the guest speaker. The Section has held its annual tax conference.
14. ULC Liaison – James P. Spica – Mr. Spica referred to his written report included as Attachment 7 to the Agenda. Mr. Spica reported that the name of the Uniform Principal and Income Act has been changed to the Fiduciary Income and Principal Act, and that the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act has now been posted to the Commission’s website.

**IX. Other Business** – Ms. Teahan thanked all who helped write the *Vansach* amicus brief.

**X. Hot Topics** Nancy Welber reported that the Court of Appeals has addressed assisted reproductive technology in one case.

Ms. Welber stated that she would not be able to attend the Council’s September meeting, so this would be her last meeting as a Council member. She thanked all for her opportunity to be on the Council, said that it has been a terrific experience for her, and that she has very much enjoyed the collegiality at the Council. Mr. Steward

thanked her for her work.

It was reported that Geoff Vernon and Rob Labe were admitted as ACTEC fellows, and they were congratulated.

Dan Hilker reported on behalf of the Council's ad hoc pre-nuptial committee that HB 4751, regarding pre-nuptial agreements, has been introduced, and that the Committee would monitor that legislation.

## **XI. Adjournment**

The meeting was adjourned by Chair James Steward at 12:02 pm.