I. Call to Order

The Chair-Elect of the Section, Marlaine Teahan, called the meeting to order at 10:15 am.

II. Attendance

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

Marlaine C. Teahan
Christopher A. Ballard
David P. Lucas
George F. Bearup
Kathleen M. Goetsch
Mark E. Kellogg
Robert C. Labe
Michael G. Lichterman
Richard C. Mills
Melisa M.W. Mysliwiec
Nathan R. Piwowarski
David L.J.M. Skidmore
Geoffrey R. Vernon
Nancy H. Welber

A total of 14 council members and officers were present, representing a quorum.

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

Christopher J. Caldwell
Rhonda M. Clark-Kreuer
Hon. Michael L. Jaconette
Marguerite Munson Lentz
Katie Lynwood
Raj A. Malviya
Lorraine F. New
James B. Steward
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:

E. Others in attendance:

J.V. Anderton
Aaron Bartell
Susan Chalgian
Daniel Hilker
Warren Kueger
Gabrielle McKee
Sueann Mitchell
Jeanne Murphy
Kurt Olson
Pat Ouellette
Ken Seavoy
Mike Shelton
Buzz Suupi

III. Minutes of the February 18, 2017, Meeting of the Council

The minutes of the February 18, 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. Mr. Ballard
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’s Treasurer’s Report was attached to the combined Agenda.

V. Chairperson’s Report – James Steward

Mr. Steward’s report was delivered by Ms. Teahan:

- Joe Viviano has moved and has resigned from his position as chair of the
  Membership Committee. The Probate Council expresses its appreciation for his
  service.
- George Gregory has been nominated to receive the George Cooney award. Ms.
  Teahan asked for a vote, and the Council unanimously concurred with the
  nomination.
- As part of its Experts in Estate Planning series ICLE will bring Natalie Choate to
  present on December 7, 2017, and is asking the Section for increased support. A
motion was made by David Skidmore to approve the expenditure of $6,000 in support of the seminar. The motion was seconded. Motion approved on a vote of 14 votes yes, 0 votes no, 0 abstentions.

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

Mr. Vernon presented a summary of the committee report:

Certificates of Trust. The committee presented a proposal to amend MCL 700.7913 and MCL 565.432, relating to the requirements to create a certificate of trust. Mr. Vernon moved to approve the proposed amendments, to seek a sponsor for the legislation, and to have it introduced in the legislature. The committee would also have the power to make nonsubstantive amendments to the draft legislation. The motion was seconded. The motion was adopted on a vote of 14 in favor, 0 opposed, and 0 abstaining.

Virtual Representation. The committee presented a proposal to amend MCL 700.7302 (with an ancillary amendment to MCL 700.1106), relating to virtual representation. Mr. Vernon moved to approve the proposed amendments, to seek a sponsor for the legislation, and to have it introduced in the legislature. The committee would also have the power to make nonsubstantive amendments to the draft legislation. The motion was seconded. The motion was adopted on a vote of 14 in favor, 0 opposed, and 0 abstaining.

Tenancy by the Entirety Trusts. The committee presented a proposal to introduce legislation that would create tenancy by the entirety trusts by creating a new section in EPIC, tentatively codified at MCL 700.7509. Mr. Vernon moved to approve the proposed amendments, present the draft legislation to other groups that might have an interest in the legislation, seek a sponsor for the legislation, and have it introduced in the legislature. The committee would also have the power to make nonsubstantive amendments to the draft legislation. The motion was seconded. The motion was adopted on a vote of 14 in favor, 0 opposed, and 0 abstaining.

Cost of Living Adjustments to EPIC. The committee discussed an ongoing project relating to adjustments of the cost of living amounts for dollar amounts in EPIC. The proposal would both update the existing amounts that are currently subject to adjustment and modify the law to provide for the adjustment of amounts that are currently not subject to adjustment. The project is ongoing and the committee will come back at a future date with proposed language.

VII. Standing Committee Reports

A. Internal Governance

1. Budget – Christopher A. Ballard – no report.

2. Bylaws – Nancy H. Welber

Ms. Welber discussed the status of the proposed amendment to the bylaws to eliminate the requirement that printing be conducted under the direction of the State Bar. The amendment will be published in the May issue of the Michigan Bar Journal and a membership vote will be taken at the June meeting.
3. Awards – Amy N. Morrissey—no report.

4. Planning – Marlaine C. Teahan

Ms. Teahan reported that she would like to try to better coordinate the way that communications are handled within the Section and among members of the Section. There are currently too many options available, and not everyone is using the same options. The communications committee will look at possible solutions.


B. Legislation and Lobbying

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

Mr. Hilker presented the report of the committee and discussed several bills that they are following:

- SB 39 (funeral representatives). This has passed both chambers of the legislature and is awaiting the governor’s signature.
- SB 49 (Guardianships/Conservatorships and sources of compensation). The senate has clarified the language in the statute, passed the bill, and the bill has been referred to committee in the house.
- HB 4297. This bill would amend the penal code to permit a presumption against a defendant in the case of a fraudulent instrument if the notary provisions were forged or if a person claims to be a notary but was not. The committee will be taking a closer look at the bill.
- SB 65 would permit the state to pursue civil remedies against someone who has received state funds in a fraudulent manner (in addition to the criminal remedies that already exist).

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

Ms. Teahan discussed the Allard case (relating to the validity of prenuptial agreements in Michigan) and appointed a workgroup to consider the matter. The workgroup includes George Bearup, Kathy Goetsch, Dan Hilker, Gabrielle McKee, Rob Labe, and Pat Ouellette.

Mr. Piwowarski presented the remainder of the committee's report:

The committee is continuing work on a Jajuga fix. They will be bringing this to CSP at the April meeting.

Uniform Law Commission has proposed a model guardianship and conservatorship act. The
committee is examining the act and will be presenting a recommendation at a future meeting.

The committee considered the issue of whether a trustee is under an obligation to change a trust’s situs if there is an income tax advantage in doing so. The committee decided that there is no need to make a statutory change.

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 committee is attempting to find a new sponsor for legislation that would exonerate the trustee of an ILIT.

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

Ms. Welber reported that the committee has approached Sen. Schuitmaker as a potential sponsor of the legislation. They will report back after the bill has been introduced.

6. Divided and Directed Trusteeship – James P. Spica

Mr. Spica provided materials (which were circulated with the agenda) outlining potential issues. Contact Mr. Spica if interested in joining the committee. The committee will attempt to conduct most of its work over the summer.

C. Education and Advocacy Services for Section Members

1. Amicus Curiae – David L.J.M. Skidmore

Mr. Skidmore reported that the committee conducted a more in-depth look at the request for an amicus brief in the case of In re Joseph Vansach, Jr., Michigan Court of Appeals file number 334732. The committee has completed its review and submitted it memorandum report to Council which recommends that the Council request leave from the Court of Appeals to file an amicus brief addressing the issues as outlined in the committee’s memorandum, which is included as Attachment 1 to these minutes.

In the Matter of Joseph Vansach, Jr., Court of Appeals file No. 334732, the Michigan Department of Human Services claims that the probate court improperly issued a protective order on several grounds which require the Court of Appeals to review interpret various provision of Michigan and Federal law, and in particular, Michigan’s Estates and Protected Individuals Code (“EPIC”). The Probate & Estate Planning Section Council disagrees with the Department’s position and believes that the issues presented are of great significance to this Section and the jurisprudence of this State, and further that an amicus brief filed on behalf of the Section will assist the Court of Appeals when evaluating the various issues presented by this case.

Mr. Piwowarski moved that the Probate Council adopt a public policy position relating to In re
Joseph Vansach, Jr., Court of Appeals file No. 334732, stating that the Council of the Probate & Estate Planning Section disagrees with the Michigan Department of Human Service's position in the case and believes that the issues presented are of great significance to this Section and the jurisprudence of this State, and further that an amicus brief filed on behalf of the Section will assist the Court of Appeals when evaluating the various issues presented by this case. The Section will arrange to file an amicus brief in the case, with a budget of $10,000. The motion was seconded. The motion passed on a vote of 12 in favor, none opposed, and 1 abstaining.

Mr. Piwowarski next moved that the Council should engage the firm Fraser Trebilcock to prepare the brief, and authorized Jim Steward, as chair of the Council, to negotiate the terms of the engagement and sign the engagement letter, subject to prior review and approval by the State Bar of Michigan; and further that Greg Kish (from the office of John A. Scott PC) would be engaged by the Council if Mr. Steward was unable to reach a satisfactory arrangement with Fraser Trebilcock. The motion was seconded. The motion passed on a vote of 10 yes, 0 no, and 3 abstaining.


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

Mr. Mills presented the report of the committee. The State Bar has requested a probate themed issue of the Michigan Bar Journal and will be looking for authors. The committee will try to come up with proposed topics for articles and will report back to Council at the next meeting.

4. Citizens Outreach – Melisa M.W. Mysliwiec

Ms. Mysliwiec reported that the State Bar is now producing pamphlets and they look very nice. The Bar keeps all revenue from the documents produced by the Bar.

5. Electronic Communications – Michael G. Lichterman

Mr. Lichterman reported on a controversy that arose because of a job posting email on the Section listserv. The committee will be presenting a recommendation at the next Council meeting. Once a policy is adopted, the committee will post guidelines to the listserv on a regular basis and will arrange to have the guidelines posted on the Section website.

6. Membership – Nicholas A. Reister

Mr. Hilker presented the report. They are asking for an increase in the amount allocated for a networking event at the Probate Institute in Acme. In 2016, the Section provided $1,500, but they are asking for $2,000 to be allocated for the event in 2017. The proposal was adopted unanimously by voice vote.

D. Ethics and Professional Standards

1. Ethics & Unauthorized Practice of Law—Katie Lynwood—no report.
E. **Administration of Justice**

1. **Litigation, Proceedings, and Forms – David L. Skidmore**

Mr. Skidmore reported on the status of the Probate Court Rules amendment. The State Bar has submitted a letter to the Supreme Court, which is now posted on the Supreme Court website. The Supreme Court has asked for the Bar’s input on a new alternative proposal.

F. **Areas of Practice**

1. **Real Estate – Mark E. Kellogg**

Mr. Kellogg reported that the committee is talking with Sen. Schuitmaker regarding proposed legislation. The committee is still working on the draft, and they will be coming to CSP in a couple of months with a proposal.

2. **Tax Committee – Lorraine F. New**

A tax nugget was attached to the materials. There will be further discussion of possible new proposals at a future meeting.

3. **Charitable and Exempt Organization – Christopher J. Caldwell**—no report.


VIII. **Other Reports**

A. **Liaisons**

1. **Alternative Dispute Resolution Section Liaison – Milton J. Mack, Jr.**—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**

Mr. Hilker reported that there is the possibility of law students being invited to attend Council meetings. There appears to be some level of interest among the students, but it may be difficult having a particular student commit to being a designated liaison. The section will continue reaching out to students and coming up with a proposal for the best course of action.

7. **Michigan Bankers Association Liaison – Nazneen H. Syed**—no report


10. SCAO Liaisons – Constance L. Brigman, Michele C. Marquardt, Rebecca A. Schnelz—no report.


14. ULC Liaison – James P. Spica

Mr. Spica prepared a summary that was included with the meeting materials.

IX. Other Business

X. Hot Topics

XI. Adjournment

The meeting was adjourned by Chair-Elect Marlaine Teahan at 11:42 am.