

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

November 13, 2010
University Club
Lansing, Michigan

Minutes

1. Call to Order

The Chair of the Section, Doug Chalgian called the meeting to order at 10:30 a.m.

2. Attendance

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

Doug Chalgian, Chair	Hon. David Murkowski
George Gregory, Chair Elect	Hon. Darlene O'Brien
Mark Harder, Vice Chair	Patricia Ouellette
Tom Sweeney, Secretary	Rebecca Schnelz
Amy Morrissey, Treasurer	Rick Siriani
Susan Allan	James P. Spica
Josh Ard	James Steward
Constance Brigman	Marlaine Teahan
Ellen Sugrue Hyman	Rob Tiplady
David Kerr	

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

Robin Ferriby
Shaheen Imami
Meg Lentz
Bob Taylor

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

None

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

Robert Brower
Hon. Phillip Harter
Michael McClory
Douglas Mielock

E. Others in Attendance

J.V. Anderton	Steve Jones
Christopher Ballard	Valerie Lafferty
Karl Barr	Rick Mills
Steve Brey	Jeanne Murphy
John Dresser	Lorraine New
Rhonda Clark	Christine Savage
Steve Dunn	Amy Tripp
Timothy Goodnow	Brittany Walker
Fred Hoops	Derek A. Walters
Mike Jaconette	Rachel Zapczynski

3. **Internal Governance**

A. **Minutes of October 9, 2010 Meeting of the Council**

Minutes of the October 9, 2010, meeting of the Council had been previously distributed with the Agenda for the meeting. Tom Sweeney noted that the Minutes should reflect that both Darleen O'Brien and Rick Sirini be shown as having excused absences. Upon motion by Mark Harder with support from Marlaine Teahan, the minutes were approved by a unanimous vote of all 19 council members present.

B. **Treasurer Report**

Amy Morrissey distributed a financial report through September 30, 2010 (**Attachment 1**). Ms. Morrissey indicated that the fund balance as of the end of September, 2010 was approximately \$154,744, which was approximately \$35,966 more than the prior year end balance. She also reported that because the Hearts and Flowers Fund balance was now \$2,400, and since last year's withdrawals were more modest than in some years, there was no suggested amount for contribution, but she will accept voluntary contributions from any member.

C. **Chairperson's Report**

Doug Chalgian said that in lieu of a report, he would like to move directly to the committee reports.

D. **Report of the Committee on Special Projects**

Jim Steward reported that the CPS had a lengthy discussion regarding the proposal for handling the qualification of foreign guardians to act in Michigan for a ward moving to the state. Included in the discussion were suggestions to use the term "application" rather than "petition", to review the process used in MCL §700.5433 and to develop a separate a SCAO form. The committee agreed to review these suggestions and to develop a revised proposal.

Jim Steward also reported that the CSP expects to have discussion in the December CSP meeting on the ongoing specialization pilot project.

E. Long Range Planning

No report.

4. Reports of Ongoing Active Committees Involving Special Projects and Active Committees

A. Legislation and Special Projects

The Section's lobbyist representative, Becky Bechler, reviewed the pending changes in the House and Senate following the 2010 election. She also reported that the Senate Judiciary Committee was holding a hearing on November 30, 2010, on House Bill 6197.

B. Updating Michigan Estate/Trust Law

Rob Tiplady reported that he was adding additional people to his committee.

C. Decanting Irrevocable Trusts

No report.

D. Power of Attorney

No report.

E. Insurance Issues

Tom Sweeney reported that contact had been initiated with both the Insurance Section Chair, who had provided a contact person, and with Deb Minit, the Executive Director of Michigan Banker's Association, which was interested in the three charges assigned to the committee.

F. Transfer on Death Deed

Josh Ard reported on issues regarding the ladybird deed vis-à-vis a transfer on death deed. He also took a survey of those present on what should happen when the power of appointment under a ladybird deed lapses. There was no conclusive result from the survey regarding the desirability of one of the three options over the other two. It was suggested that a liaison be established with the real estate section in connection with this committee's work.

G. Statute of Repose

Doug Mielock reported that he would be discussing the prior efforts to enact this statutory provision with both John Scott and John Bos.

H. Foreign Guardianships

This subject had been discussed in detail in connection with the CSP meeting that was reported on by Jim Steward.

I. Guardianships and End of Life

Connie Brigman reported on the lack of authority for guardians to execute “do not resuscitate” (“DNR”) orders. There was discussion regarding Judge Mack’s opinion in a recent case, and Judge Harter also made comments on this subject. The committee will continue to review this.

J. Probate Appeals and Jury Trials

Marlaine Teahan reported on the proposed alternative statutory approaches to end probate appeals to circuit courts. Proposal 1 did not include a laundry list of final order matters. Proposal 2 did contain the laundry list. Judge Murkowski reported that the Board of Directors of the Probate Judge’s Association supported Proposal 1. After discussion, Doug Chalgian moved and David Kerr seconded a motion to approve Proposal 1. Jim Steward then moved and George Gregory seconded an amendment to the Proposal to add the laundry list to Proposal 1. After discussion, the amendment to the motion failed with seven in favor, nine against, and three abstentions. The motion on Proposal 1 passed with 16 in favor, 2 against, and one abstention.

K. Service to Members

No report.

L. ICLE

Jeanne Murphy reported that ICLE was offering to take on a responsibility for providing a searchable internet access to the Probate Journal articles, in addition to portions of Judge Harter’s website, including his review of probate cases, probate notes and the EPIC questions and answers library. The financial arrangements between ICLE and the Section have not yet been discussed. It was the consensus that access to this information would be limited to Section members, probate judges and probate registers. On motion by David Kerr, seconded by George Gregory, the proposed arrangement was approved conceptually by unanimous approval of the 19 council members, subject to both further discussion and agreement on the financial arrangements and the drafting of a definitive agreement with terms acceptable to ICLE and the Section.

5. Reports of Other Committees As Requested in Advance

A. Ethics

David Kerr reported on recent changes in the Michigan Rules of Professional Conduct. The first involves changes to Rule 1.15 with respect to bank accounts used by attorneys in certain situation, particularly while acting in a fiduciary role. He also reported on new Rule 3.3 to be effective January 1, 2011, regarding disclosure of information to a court under certain circumstances. He suggested that these matters be more fully discussed at the December CSP meeting.

B. Unauthorized Practice of Law

Pat Ouellette reported on a recent incident involving a trust/will mill operation and the client's unsuspecting purchase of life insurance. She has made contact with the Michigan Attorney General's Office regarding this and will keep us advised of further developments.

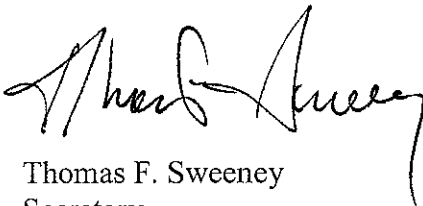
6. Other Business

None.

7. Adjournment

The meeting was adjourned at 11:55 a.m.

Respectfully submitted



Thomas F. Sweeney
Secretary