

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

November 12, 2011
University Club
Lansing, Michigan

Minutes

1. Call to Order

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

2. Attendance

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

George Gregory, Chair	Meg Lentz
Mark Harder, Chair Elect	Hon. Darlene O'Brien
Tom Sweeney, Vice Chair	Pat Ouellette
Amy Morrissey, Secretary	Rebecca Schnelz
Shaheen Imami, Treasurer	Ellen Sugrue-Hyman
Josh Ard	Bob Taylor
Chris Ballard	Marlaine Teahan
George Bearup	Rob Tiplady
Constance Brigman	Nancy Welber
David Kerr	

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

Susan Allan	Jim Spica
Hon. David Murkowski	Jim Steward

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

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

Hon. Phillip E. Harter	Susan S. Westerman
Douglas A. Mielock	

E. Others in Attendance

W. Jerry Byrd	Rick Mills
Rhonda Clark-Kreuer	Lorraine New
Keven DuComb	Neal Nusholtz
Steve Dunn	Nick Reister
Kathleen Goetsch	Sharri L. Rolland Phillips
Jill Goodell	Melinda Valena Sheets
Michael Lichterman	Derek A. Walters
David P. Lucas	Serene Zeni

3. Internal Governance

A. Minutes of October 22, 2011 Meeting of the Council

Minutes of the October 22, 2011, meeting of the Council had been previously distributed for the meeting. Upon motion by Connie Brigman with support from Tom Sweeney the minutes were approved by a unanimous vote of all Council members present.

B. Treasurer Report

Shaheen Imami discussed the financial report through September 30, 2011 and the proposed budget for 2011-2012 previously distributed with the Agenda for the meeting (**Attachment 1**).

Mr. Imami indicated that the fund balance as of the end of September 2011 was approximately \$183,212. The Section ended its fiscal year with an increase of approximately \$31,000 in part due to reduced Journal costs and no amicus briefs.

Upon motion by Shaheen Imami with support from Meg Lentz, the proposed budget for the 2011-12 fiscal year was approved by a unanimous vote of all Council members present. (**Attachment 1**)

C. Chairperson's Report

George Gregory noted that an updated committee list was distributed and that Michigan Lawyers Weekly materials were included in the meeting materials for those interested in reporting cases.

Mr. Gregory reported that he has been asked to give a presentation to Board of Commissioners for the State Bar of Michigan. Some items on which he will report are the Section website development activities, including website for the public, pamphlets, Section Journal, amicus, the Section lobbyist, efforts concerning legislation, court rules, ethics, and forms, manual for officers and committees.

D. Report of the Committee on Special Projects

Rob Tiplady reported that there was discussion on Senate Bills 604 and 605 but no position was being recommended by CSP to Council.

There was also substantial discussion on POLST (Physicians Orders for Life-Sustaining Treatment) led by Connie Brigman and Josh Ard who, along with Jim Steward, have been the Section's representatives on the POLST Taskforce. After discussion, the Council suggested that Ms. Brigman, on behalf of the Section, make the following recommendations to the POLST Taskforce concerning the POLST form:

1. A POLST form stating that it is effective immediately;
2. Medical staff will follow the POLST instructions with or without prior notice to a patient's representative, but that as soon as possible, the medical staff will notify the contact person that the patient or the court has provided to them.
3. The POLST form must provide a legible notice near the signature line that the patient and/ or the patient's authorized representative may revoke these directions at any time and in any manner intended to communicate a revocation.
4. The POLST form must be signed and the signature must be from a person with the legal authority to make medical decisions for the patient. The current hierarchy of persons authorized to make medical decisions for a Michigan patient is the patient, the patient advocate, then the guardian.
5. The attending physician who signs the order must also certify that this patient has an end-stage condition or a terminal illness.

Upon motion by Rob Tiplady and supported by David Kerr, the Council voted to support in principle Senate Bill 777 concerning life insurance and annuity replacement. A hand vote of Council members present was taken: 17 in support, 0 opposed 1 abstention.

E. Other Committee Reports

1. Awards Committee

Doug Mielock reported that John Scott received the Michael Irish Award

2. Continuing Education and Annual Probate Institute

Tom Sweeney reported that an agreement with Black Star Farms for the Speakers' Dinner is in place. Discussion was held concerning a national speaker for the Annual Institute.

3. Pamphlets

Ellen Sugrue-Hyman reported that the pamphlet committee is working on reformatting the Section's pamphlets.

4. Electronic Communications

Josh Ard reported that the State Bar is looking at upgrading hardware to support the large listserves such as the Probate & Estate Planning Section's listserve in response to recent outage.

5. Legislation

Marlaine Teahan reported that the legislation committee has created a chart of legislation to monitor and will be adding guardianships, family consent, and living wills to the chart.

The history of family consent law was discussed. The topic was referred to the Guardianship and Conservatorship Committee for study.

Upon a motion by Mark Harder and supported by Rob Tiplady, the Council voted to support House Bill 5154 which contains amendments to the Uniform Principal and Income Act. It was noted that some of the amendments address issues concerning marital trusts that are beneficiaries of IRAs. It was also noted that the 3.5% percent referenced in subsection (7) of the draft legislation was a result of compromise. The motion was carried by a hand vote of the Council: 17 in support, 0 opposed, 1 abstention.

6. Updating Michigan Trust/Estate Law

Rob Tiplady reported that the Trust/Estate Law committee is working on several issues identified for legislative action. There are five issues in the drafting stage.

7. Ethics

David Kerr reported that George Gregory's letter from the Council to the Michigan Supreme Court regarding amendments to MRPC 7.3 was sent. (**Attachment 2**)

8. Unauthorized Practice & Multidisciplinary Practice

Bob Taylor reported that the UPL committee has been meeting with the legislative committee to address UPL concerns. Pat Oullette reported that the Attorney General's office is interested in UPL, but they need more complaints.

9. Charitable Giving/Exempt Organizations

Chris Ballard reported concerning Senate Finance Committee recommended limitations on charitable deductions for high income individuals

10. Transfer Tax

Lorraine New distributed and reported on November 2011 Tax Nugget which states that the IRS published final regulations with guidance (examples and computations) concerning IRC Section 2036 issues of retained use of property and other payments from property for life. These regulations affect estates filing Form 706.

11. Guardianships and Conservatorships

Connie Brigman reported that the regular Guardianships and Conservatorships committee is working on reviewing the latest Uniform Probate Code revisions for possible changes to EPIC conservatorships and guardianships; the committee is reviewing the statute section by section.

The Council directed the Committee to look at statutes concerning living wills, family consent, and guardianships. The Committee will report to CSP its recommendations and findings.

12. Tax and Taxation Section Liaison

Fred Hoops III reported that the Tax Section would like to partner with the Probate & Estate Planning (P&EP) Section to bring in a speaker on Federal Estate Tax changes. George Gregory reported that the P&EP Section authorized the Tax Section to post materials on the P&EP Section listserve relevant to our membership.

13. Court Rules and Forms Committee Liaison

Marlaine Teahan made a motion that the Council reaffirm its prior approval of proposed changes to MCR 5.801 and approve conforming changes related to Chapter 7 of the Michigan Court Rules (MCR 7.101); Tom Sweeney supported the motion. Mark Harder moved that that Council amend the motion to allow Marlaine Teahan to make necessary grammatical changes to these rules; Meg Lentz supported the motion. This issue will likely be placed on the administrative hearing schedule in early 2012. The motion was carried by a hand vote of Council members present: 19 in support, 0 opposed.

See Ms. Teahan's Memorandum dated November 12, 2011 which is a summary of the minutes of the SCAO Forms Committee meeting of September 1, 2011. Ms. Teahan reported that the Section Rules and Forms

committee recommended some changes that were not acted upon; it was recommended that these forms be discussed at a future Committee on Special Projects meeting.

14. Michigan Probate Judges Association Liaison

Hon. Darlene O'Brien reported on discussion at the Family Law meeting that the Michigan Court of Appeals would welcome a list of topics in which the law could be more developed, to increase guidance on certain areas of law through published opinions. Hon. Phil Harter noted that there are a number of unpublished cases concerning construction of a document as a Will. George Gregory asked the Amicus Committee to look at areas of law relevant to our Section where case law could be more developed and to make recommendations to the Council.

F. Adjournment

There being no other business brought before the Council, Tom Sweeney moved to adjourn and Meg Lentz supported. The meeting was adjourned at 11:40 a.m.

Respectfully submitted,

Amy Morrissey
Secretary