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

November 5, 2016
Lansing, Michigan

Minutes

I. Call to Order

The Chair of the Section, James Steward, called the meeting to order at 10:18.

II. Attendance

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

   James B. Steward
   Marlaine C. Teahan
   Marguerite Munson Lentz
   Christopher A. Ballard
   David P. Lucas
   George F. Bearup
   Kathleen M. Goetsch
   Mark E. Kellogg
   Robert B. Labe
   Katie Lynwood
   Lorraine F. New
   Nathan R. Piwowarski
   David L.J.M. Skidmore
   Nazeen H. Syed
   Geoffrey R. Vernon
   Nancy H. Welber

   A total of 16 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
   Michael G. Lichterman
   Raj A. Malviya
   Richard C. Mills
   Melisa M.W. Mysliwiec
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:
George W. Gregory
Douglas A. Mielock

E. Others in attendance:
W. Josh Ard
Ryan Bourjaily
Mark DeLuca
Daniel S. Hilker
Sueann Mitchell
Amy Rombyer Tripp
Robert Sacharski
Jessica Schilling
Mike Shelton
James P. Spica
Buzz Suuppi
Paul Vaidya

III. Minutes of the October 10, 2016 Meeting of the Council
The minutes of the October 10, 2016, 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. Mr. Lucas requested contributions from Council members to the Hearts & Flowers fund.

V. Chairperson’s Report – James Steward
- Committee assignments are still ongoing and will be ironed out soon.
- There is a new subcommittee for EPIC updates to deal with electronic document issues. Volunteers for the committee should contact Mr. Steward.
- The State Bar will no longer be providing a free version of the printed directory to members; everything will be electronic by default and a printed version will be available for purchase.

VI. Report of the Committee on Special Projects – Geoffrey R. Vernon
As mentioned in the Chair's report, there will be an ad hoc committee to deal with electronic signatures.
The Committee on Special Projects will be working on revisions to the certificates of trust statute.

The Committee recommend technical corrections to the Michigan Trust Code to change MCL 700.7105(2)(a) to add a reference to section 7402 and MCL 700.7815(2) to delete "unless the trust instrument expressly provides otherwise". Mr. Vernon made a motion to adopt these changes. Adopted with 16 in favor, no nays, no abstentions.

VII. Standing Committee Reports

A. Internal Governance

1. Budget – Christopher A. Ballard

   The budget was covered during the Treasurer's report. Mr. Lucas moved that the budget as presented be adopted. The motion was seconded. The motion was approved on a voice-vote with no nays and no abstentions.


   3. Awards – Amy N. Morrissey—no report.

   4. Planning – Marlaine C. Teahan—

Ms. Teahan asked for ideas regarding long-range planning for the Section. There was no further discussion.


B. Legislation and Lobbying

1. Legislative Analysis and Monitoring Committee – Mr. Bourjaily

   SB 597— Qualified Dispositions in Trust Act. The Committee is expecting this bill to make it through the legislature by the end of the year.

   SB 1010 – ILIT legislation. The committee is discussing this bill with the insurance industry lobby. Based on preliminary feedback, the Committee may not be able to get this bill through the legislature by the end of the year.

2. Legislation Development & Drafting Committee –

Mr. Piwowarski reported on the EPIC update list: The committee will be setting deadlines for proposals to be addressed by the committee. They are expecting that drafts will start being ready for consideration by CSP/Council within approximately 3 months.
3. Insurance Legislation Ad Hoc Committee –

Mr. Vernon reported on SB 1010 (ILIT Trustee exoneration statute). The Committee will be meeting with the Life Insurance Association, which has been opposing the legislation. There is support for the bill from the Bankers Association. The Committee might try to move the legislation forward even with opposition from the Life Insurance Association.

4. Assisted Reproductive Technology Ad Hoc Committee –

Ms. Welber reported that the ART proposals that were previously approved by Council will be submitted to the legislature for introduction.

She also reported that the supplemental provisions in the Uniform Probate Code regarding electronic signatures will not be addressed by ART committee, and will instead be addressed by an ad hoc committee of the Council.

C. Education and Advocacy Services for Section Members

1. Amicus Curiae –

Mr. Skidmore discussed the current status of the Mardigian estate. The Michigan Supreme Court granted cert and has invited amicus briefs. There is an ad hoc committee of the Council that is working on proposed legislation to address the issues raised in the case. Mr. Steward proposed that the Council should not file an amicus brief. There was no objection to this proposal.

2. Probate Institute – Marguerite Munson Lentz

Ms. Lentz reported that the dates of the 2017 Probate Institute will be May 18-20 and June 16-17. Jeff Kirkey at ICLE is working to find national speakers. There will be a focus on income tax issues at the Institute.

3. State Bar and Section Journals – Richard C. Mills – no report

4. Citizens Outreach – Melisa M.W. Mysliwiec

Mr. Steward reported that there are still brochures available. They will be available for sale at various Section events until the supply is exhausted.


D. Ethics and Professional Standards

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


Ms. Teahan reported that a special state bar committee is being formed to address civil discovery rules. The committee will be looking for input on what court rules could be improved. Send all recommendations to Ms. Teahan or to George Strander, Probate Register for Ingham County.

Probate Court appeals, the bills implementing from the probate court to the Court of Appeals (no longer going through circuit court) have now passed. The primary bill (SB 632) is now effective, but there are no court rules. HB 5503, a technical correction to MCL 700.1303, is not effective until December 26, 2016. The Committee has sent a letter to the Supreme Court with proposed court rules. The topic of court rules will be on the Court's November administrative hearing calendar.

A Supreme Court staff person has suggested changes to the proposed rules, which were attached to the Agenda. The Committee agrees with several of the changes. The proposed rules include two additions to the Council's original: MCR 7.202 includes an addition to definitions of what is a final order and MCR 7.213 includes an addition to priority cases. Ms. Teahan feels that the Council should not take a position on those issues at this time.

It is likely that the Supreme Court will adopt the proposed rules on an interim basis, but that there will be a 90 day public commentary period after the interim rules are adopted. There will be a public hearing following that period and the Section will have the opportunity to present comments or testimony at that time.

Ms. Teahan made a motion to adopt a public policy position in support of the submission that the Committee made to the Supreme Court on Sept 12. The motion was tabled to the December meeting of the Council.

Mr. Gregory made a motion that the Council ratifies the submission that was made by the Committee to the Supreme Court and approving all actions taken by Ms. Teahan and the Committee to date. Motion was seconded. The motion was approved unanimously with none opposed and no abstentions.

F. Areas of Practice

1. Real Estate –

Mr. Kellogg reported that the Committee is discussing MCL 211.21a. The Committee believes that it is still possible to get changes before the end of the year.

2. Tax Committee –

Ms. New led a discussion of a recently issued Tax Court Memo opinion for the Estate of Beyer. Her materials were attached to the agenda.


VIII. Other Reports

A. Liaisons


3. Elder Law and Disability Rights Section Liaison –

Ms. Tripp reported that Michigan was the fifth state to enact ABLE legislation. An account can be created to assist an individual, but there are still a lot of bugs to be worked out in the Michigan system. She suggests setting up an account in Ohio; the account can later be transferred to Michigan once the implementation issues have been addressed.

4. Family Law Section Liaison – Patricia M. Ouellette—no report.

5. ICLE Liaison – Jeanne Murphy—no report.


7. Michigan Bankers Association Liaison – Susan M. Allan—

Ms. Syed reported on the Bankers association position on the Digital Assets Act. MBA supports the inclusion of additional language from the Wisconsin Act. The Section Committee is already working on including this language.


10. SCAO Liaisons – Constance L. Brigman, Michele C. Marquardt, Rebecca A. Schnelz

Mr. Steward reported on the SCAO meeting in September. E-filing in the probate courts is probably 5-10 years out on a statewide basis, but some counties are experimenting with it now. There is a new form for appointment of a special fiduciary to oversee disposition of decedents body. There was a discussion regarding the definition of indigency, which was not resolved by SCAO. The inventory form is being modified to make it clear that assets that pass by beneficiary designations and prepaid funeral contracts do not need to be included on the probate inventory. SCAO is looking at all forms to make them easier to read and to adjust the layout to make them easier to work with. This will take a while, and there is no actual timeline. A copy of a report from Michele Marquardt and Rebecca Schnelz is attached.
11. Solutions on Self-Help Task Force Liaison –

Ms. Goetsch reported on the website being created that helps people draft their own wills without going through an attorney. She suggested that there be a link to the Section brochures on the website.


13. Taxation Section Liaison – George W. Gregory – no report

IX. Other Business

Ms. Teahan reported on the Listserv discussion regarding the new flat real estate recording fees. Note that there is an exception for "charter counties", which includes Wayne County. Check with the register of deeds office to verify recording fees.

X. Hot Topics

Ms. Welber reported on pension reform legislation reported out of the Senate finance committee. Under the proposed legislation, stretch IRAs would no longer be permitted for anyone other than spouses, minors, or disabled beneficiaries. In all other circumstances, the 5-year rule will apply. There would still be a possibility of stretching $450,000 worth of assets using the current rules, but this creates a huge administrative headache. There is an ACTEC committee that will be commenting on the legislation.

XI. Adjournment

The meeting was adjourned by Chairperson James Steward at 11:46 am.