

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

November 11, 2017
Lansing, Michigan

Minutes

1. Call to Order: The Chair of the Section, Marlaine C. Teahan, called the meeting to order at 10:30 am.

2. Introduction of Guests and attendance.

a. meeting attendees introduced themselves

b. The following officers and members of the Council were present:

Marlaine C. Teahan, Chair

Marguerite Munson Lentz, Chair Elect

Christopher A. Ballard, Vice Chair

David P. Lucas, Secretary

David L.J.M. Skidmore, Treasurer

Rhonda M. Clark-Kreuer

Kathleen M. Goetsch

Nazneen Hasan

Angela M. Hentkowski

Michael L. Jaconette

Robert B. Labe

Michael G. Lichterman

Raj A. Malviya

Richard C. Mills

Melisa M.W. Mysliwicz

Lorraine F. New

Kurt A. Olson

Nathan R. Piwowarski

Christine M. Savage

Geoffrey R. Vernon

A total of 20 Council officers and members were present, constituting a quorum

3. Absences

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

Christopher J. Caldwell

Mark E. Kellogg

Katie Lynwood

b. The following officers and members of the Council were absent without excuse:

none

c. The following ex-officio members of the Council were present:
George W. Gregory
Michael J. McClory

d. The following liaisons to the Council were present:
Jeff Kirkey
James P. Spica

e. Others present:
Aaron Bartell
Ryan Bourjaily
Daniel Borst
Kim Browning
Ellen "Molly" Burns
Georgette David
Daniel Hilker
J. David Kerr
Andy Mayoras
Gabrielle Mckee
Sueann T. Mitchell
Neal Nusholtz
Scott Robbins
Jim Ryan
Mike Shelton
Joan Skrzyniarz

4. Minutes of October 14, 2017 Meeting of the Council: it was moved and seconded to approve the Minutes of the October 14, 2017 meeting of the Council, as included in the meeting agenda materials and presented to the meeting. On voice vote, the Chair declared the motion approved.
5. Chair's Report—Marlaine C. Teahan: The Chair reviewed the Chair's Report which was included with the meeting agenda materials. There was discussion regarding the Report, including the Chair's appointment of Dan Borst as the Council's liaison to the Michigan Bankers Association. The Treasurer of the Council, David L.J.M. Skidmore, requested that Council members contribute \$35 as an annual contribution to the Council's Hearts and Flowers Fund.
6. Report of the Committee on Special Projects – Geoffrey R. Vernon: Mr. Vernon discussed the meeting of the Committee on Special Projects which had immediately preceded the meeting of the Council. Mr. Vernon reported that the Committee on Special Projects had discussed a report from the Divided and Directed Trusteeships *Ad Hoc* Committee, including a proposed bill to amend the estates and protected individuals code, in the form of Legislative Proposal September 28, 2017, as

included in the Committee on Special Projects agenda materials and presented to the Committee on Special Projects meeting, and Mr. Vernon presented the proposed bill to the meeting. The Committee's motion is:

the Probate and Estate Planning Section supports a proposed bill to amend the estates and protected individuals code, in the form of a Legislative Proposal September 28, 2017, as prepared by, and included in a report from, the Divided and Directed *Ad Hoc* Committee, and included in the Committee on Special Projects agenda materials, with authority granted to James Spica, Chair of the Divided and Directed Trustships *Ad Hoc* Committee, to make non-substantive changes to such Proposal.

The Chair stated that, since this would be a public policy position of the Section, the vote of the Council would have to be recorded. Following discussion, the Chair called the question and the Secretary recorded the vote of 20 yes, 0 no, 0 abstain, and 3 not voting. The Chair declared the motion approved.

7. Committee reports

- a. Community Property Trusts *Ad Hoc* Committee - Neal Nusholtz: Mr. Nusholtz presented a Memorandum from the Committee, dated October 29, 2017, including a proposed Bill to amend the Estates and protected individual code, which Memorandum and proposed bill is included in the Council agenda meeting materials. The Committee's motion is:

the Probate and Estate Planning Section supports a proposed bill to amend the estates and protected individuals code, in the form of a proposed Bill, as prepared by, and included in a Memorandum from, the Community Property Trusts *Ad Hoc* Committee, which Memorandum and proposed Bill are included in the Council agenda materials.

The Chair stated that, since this would be a public policy position of the Section, the vote of the Council would have to be recorded. Following discussion, the Chair called the question and the Secretary recorded the vote of 20 yes, 0 no, 0 abstain, and 3 not voting. The Chair declared the motion approved.

- b. *Amicus Curiae* Committee - David L.J.M. Skidmore: Mr. Skidmore stated that the Committee would report to the Council on three matters. At that time, Robert B. Labe excused himself from the meeting due to a potential conflict of interest.

- i. *Estate of James Erwin*: Mr. Skidmore discussed the *Estate of James Erwin*. Following discussion, Mr. Skidmore informed the Council that the Committee would make a further presentation to the Council at a future meeting. The Chair requested a report before the December meeting so that, if it appears practical to do so, an email vote can be conducted on whether an amicus should be filed in this matter

- ii. *Brody Trust*: On behalf of the Committee, David Skidmore discussed the *Brody Trust* case in the Michigan Court of Appeals, and that the Committee's concern regarding the Court of Appeals' holding that, irrespective of the capacity of the settlor of the Trust, every remainder beneficiary of the Trust has standing in the matter. Procedurally, an application for leave to appeal is being submitted to the Michigan Supreme Court. The Committee's motion is:

the Probate and Estate Planning Section authorizes (i) the filing of an *amicus curiae* brief supporting the grant of leave to appeal, with the position that the remainder beneficiary of a trust might be an interested person in a proceeding regarding such trust if the settlor of such trust is incapacitated or deceased, but such remainder beneficiary is not an interested person in a proceeding regarding such trust if the settlor is alive with legal capacity; and (ii) the payment of up to \$15,000 in legal fees and costs for the preparation and submission of such brief on behalf of the Section; and (iii) the engagement of Warner Norcross & Judd ("WNJ") to prepare and submit such brief.

The Chair stated that, since this would be a public policy position of the Section, the vote of the Council would have to be recorded. Mr. Mayoras reported that the Committee's recommendation regarding engagement of the preparer was made without the involvement of Mr. Skidmore, who is a member of WNJ. Following discussion, the Chair called the question and the Secretary recorded the vote of 19 yes, 0 no, 0 abstain, and 4 not voting; Mr. Skidmore did not vote on the matter. The Chair declared the motion approved.

- iii. *Brody Conservatorship*: On behalf of the Committee, Andy Mayoras discussed the *Brody Conservatorship* case in the Michigan Court of Appeals, which is a companion case to the *Brody Trust*, and that the Committee's concern regarding the Court of Appeals' holding that the conservator priority-of-appointment provisions of EPIC are only guidelines, and that the person of highest priority under EPIC could not be appointed without the Probate Court's consideration of an independent fiduciary and that the independent fiduciary was unsuitable. Procedurally, an application for leave to appeal is being submitted to the Michigan Supreme Court. The Committee's motion is:

the Probate and Estate Planning Section authorizes (i) the filing of an *amicus curiae* brief supporting the grant of leave to appeal, with the position that the statutory scheme of priority of appointment is not simply a guideline but must be followed by the Court, subject to any finding of unsuitability pursuant to MCL

700.5409(1)(h); and (ii) the payment of up to \$15,000 in legal fees and costs for the preparation and submission of such brief on behalf of the Section; and (iii) the engagement of the Chalgian and Tripp law firm to prepare and submit such brief.

The Chair stated that, since this would be a public policy position of the Section, the vote of the Council would have to be recorded. Following discussion, the Chair called the question and the Secretary recorded the vote of 19 yes, 0 no, 0 abstain, and 4 not voting. The Chair declared the motion approved.

- c. Court Rules, Forms & Proceedings Committee - Melisa Mysliwiec: Ms. Mysliwiec stated that the Committee would report on three matters:
- i. ADM File No. 2002-37 (MCR amendments for e-filing and electronic records): Ms. Mysliwiec presented her memorandum, dated November 3, 2017 (the "CRFPC Memorandum"), including a discussion of ADM File No. 2002-37, regarding e-filing, which was included in the Council agenda meeting materials. The Committee's motion is:
 - the Probate and Estate Planning Section has approved the submission of the comments regarding ADM File No. 2002-37 which appear in the CRFPC Memorandum.The Chair stated that, since this would be a public policy position of the Section, the vote of the Council would have to be recorded. Following discussion, the Chair called the question and the Secretary recorded the vote of 19 yes, 0 no, 0 abstain, and 4 not voting. The Chair declared the motion approved.
 - ii. Civil discovery draft rule proposals: Ms. Mysliwiec stated that the CRFPC Memorandum includes comments to Civil Discovery Draft Rule Proposals which are due by December 1, 2017. The Committee's motion is:
 - the Probate and Estate Planning Section has approved the submission of the comments regarding a variety of proposed changes to the Michigan Court Rules which appear in the CRFPC Memorandum.The Chair stated that, since this would be a public policy position of the Section, the vote of the Council would have to be recorded. Following discussion, the Chair called the question and the Secretary recorded the vote of 19 yes, 0 no, 0 abstain, and 4 not voting. The Chair declared the motion approved.
 - iii. Update on HB 4821 and HB 4822: Ms. Mysliwiec gave an oral report on the status of HB 4821 and HB 4822, and stated that, at this time, the Committee was not requesting any change to the Section's previously-taken public policy position.

- d. Oral report on HB 4751 - Christine Savage: Ms. Savage gave an oral report on the status of HB 4751, regarding nuptial agreements. No action was requested of, nor taken by, the Council at this time on HB 4751.
 - e. Insurance Legislation Committee - Geoff Vernon: Mr. Vernon gave a report to the Council on SB 644, regarding the liability of, and claims and actions against, insurance agents and agencies. No action was requested of, nor taken by, the Council at this time on SB 644. The Chair will contact the Insurance Section's Chair to be sure that they are aware of this bill.
 - f. Tax Committee - Robert B. Labe: Mr. Labe gave a report to the Council regarding Revenue Procedure 2017 - 58, which sets forth various annual inflation adjustments under the Internal Revenue Code.
- 8. Liaison Reports - The Chair stated that there were no Liaison reports to be presented to the Council.
 - 9. Other Business: The Chair called for any other matters or business to be brought before the Council at the meeting, and none were offered or requested.
 - 10. Adjournment: seeing no other matters or business to be brought before the meeting, the Chair declared the meeting adjourned at 12:14 pm.

Respectfully submitted,
David P. Lucas, Secretary