I. Call to Order

Harold Schuitmaker, Chair of the Probate and Estate Planning Section, called the meeting to order at 10:30 a.m.

II. Excused Absences

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

Harold Schuitmaker, Chair
Doug Chalgian, Chair-elect
George Gregory, Vice-Chair
Mark Harder, Secretary
Marilyn Lankfer, Treasurer
Hon. David Murkowski
David Kerr
Bob Taylor
Shaheen Imami
Josh Ard
Jim Steward
Amy Morrissey
Tom Sweeney
Rebecca Schnelz
Hon. Darlene O’Brien

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

Hon. Phil Harter
John Bos
Bob Brower
Susan Westerman

The following officers and members of the Council were absent with prior notice and excuse:

James P. Spica
Rob Tiplady
Marlaine Teahan
Rick Siriani
Patricia Ouellette
Ellen Sugrue Hyman

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

Robin Ferriby
Sue Allan
III. **Introduction of Guests**

Members of the Council, officers, and guests introduced themselves. The following guests were in attendance:

Jeanne Murphy  
Lorraine New  
Tess Sullivan  
Connie Brigman  
Steve Jones  
Michele Marquardt  
Michael Mestelle

IV. **Minutes of September 19, 2009 Meeting of the Council**

Minutes of the September 19, 2009, meeting of the Council had been previously distributed with the Agenda for the meeting. A correction to the portion of the minutes discussing which members would receive the Journal in hard copy was noted. Upon motion by Mark Harder, with support from John Bos, the minutes as corrected were unanimously approved.

V. **Treasurer Report – Marilyn Lankfer**

Marilyn Lankfer asked members of the Council to consider a contribution of $35.00 to the Hearts and Flowers fund.

Marilyn Lankfer presented the proposed budget for 2009-10 ([Attachment 1](#)) and reviewed it for the Council. Marilyn Lankfer moved approval of the budget. Harold Schuitmaker supported her motion. The Council unanimously approved the budget.

There was no financial report this month because the State Bar has not yet delivered final financial statements as of and for the period ending September 30, 2009.

VI. **Chairperson's Report – Harold G. Schuitmaker**

Harold Schuitmaker reminded the Council that 2010 will mark the 50th Annual Probate Institute. Harold Schuitmaker and Jeff Kirkey are preparing a special video tribute devoted to the history of the Institute and requested pictures from prior Institutes to include in the video.

Harold Schuitmaker also reported that the Michael Irish award has been given posthumously to Russell Paquette. Mr. Paquette died several months ago. He was a former Chair and professor at Wayne State University’s Law School. He also was instrumental in the enactment of the Revised Probate Code in 1979.

Pat Prince’s husband recently had surgery and Mr. Schuitmaker asked members of the Council to convey their thoughts and best wishes to him for a speedy recovery.
VII. **Report of the Committee on Special Projects – Amy M. Morrissey**

Amy Morrissey reported on the meeting of the Committee on Special Projects that preceded the Council meeting.

Ms. Morrissey first noted that HB 5009 and HB 5010 were passed by the House of Representatives. These bills make technical amendments to the Personal Perpetuities Act. They are substantially the same as HB 6539 and HB 6540 that were introduced in the legislature in the prior session. The Committee has recommended to the Council that it support passage of this legislation, and Ms. Morrissey offered a motion to recommend enactment of HB 5009 and HB 5010. David Kerr supported the motion, which was adopted by the Council on a recorded vote of 15-0 with no abstentions.

The Committee on Special Projects also discussed SB 885 (authorizing binding funeral instructions) ([Attachment 2](#)). The Committee generally supported this bill, but expressed concerns that the bill fails to authorize a single individual to make decisions. Ms. Morrissey offered a motion that the Council offer support in principle for SB 885 if it was modified to authorize a single individual to make funeral decisions. Tom Sweeney supported her motion, which the Council then approved on a recorded vote of 15-0 with no abstentions.

Ms. Morrissey also reported that the Committee on Special Projects had discussed whether an agent under a Durable Power of attorney has authority to establish trusts and whether enactment of the Michigan Trust Code has changed the ability of agents to do so. The Committee has referred the matter to the Michigan Trust Code Committee for discussion and further consideration.

Ms. Morrissey also reported that the Committee on Special Projects discussed SB 882 (statute of repose for engineers and contractors) ([Attachment 3](#)) and recommended pursuing a similar statute of repose for attorneys. John Bos will follow up with the Section’s lobbyist, Becky Bechler, about the matter and report at a future meeting.

Finally, Ms. Morrissey reported the Committee on Special Projects discussed pending durable power of attorney legislation. HB 5188 is a bill separate from legislation previously discussed by the Power of Attorney Committee. The Committee on Special Projects has referred this legislation to the Power of Attorney Committee.

VIII. **Standing Committee Reports**

A. **Internal Governance**

   1. **Budget – George Gregory**

      No further report, the budget having being approved as part of the Treasurer Report.
2. **Bylaws – Marilyn Lankfer**

Marilyn Lankfer reported her Committee will meet shortly to review notice requirements under the bylaws and to evaluate whether changes are needed.

3. **Michael Irish Award – Brian Howe**

Harold Schuitmaker reminded the Council that as previously noted Russ Paquette has been posthumously awarded the Michael Irish Award.

4. **Long Range Planning – Doug Chalgian/Nancy Little**

No report

5. **Nominations – Michael McClory**

No report

6. **Relations with the State Bar – Thomas F. Sweeney**

Tom Sweeney reported on efforts in the past year to have articles published in newspapers around the state to highlight the good works accomplished by attorneys free of fees. Unfortunately, the results of this initiative were disappointing. Mr. Sweeney reports that the Bar is hoping to work with courts to gain their support for this initiative and to make the same information more available via websites and other means.

7. **Annual Meeting – Douglas G. Chalgian**

No report

**B. Education and Advocacy Services for Section Members**

1. **Amicus Curiae – Ellen Sugrue Hyman**

No report

2. **Continuing Education and Annual Probate Institute – George Gregory**

George Gregory reported on the 2010 Annual Institute. His report, including proposed schedule of speakers, is Attachment 4. Two national speakers have been confirmed for 2010: Susan Porter from US Trust and Natalie Choate. 26 speakers of the speakers are now confirmed; 6 remain to be confirmed. Stout Risius, Chemical Bank, and Greenleaf Bank have all agreed to sponsor the Institute. Additional requests to other potential sponsors have been made. The Agenda for the Institute will be finalized by the November Council meeting.
3. Section Journal – Nancy L. Little

Harold Schuitmaker reported on behalf of Nancy Little that the next issue of the Journal will be published in mid-November.

4. State Bar Journal – Amy M. Morrissey

No report

5. Pamphlets – Ellen Sugrue Hyman

No report

6. Electronic Communications – Josh Ard

No report

C. Legislation and Lobbying

1. Legislation – Harold G. Schuitmaker/John R. Dresser/George Gregory

There having been an extensive discussion of pending legislation during the meeting of the Committee on Special Projects and included in the Committee’s earlier report to the Council, there was no further report.


There having been an extensive discussion of pending power of attorney legislation during the meeting of the Committee on Special Projects, there was no further report.

3. Michigan Trust Code – Mark K. Harder

Mark Harder reported that the Commentary to the Trust Code will be published in February. The attendees briefly discussed and concurred that it would be acceptable if the Michigan Court Rules were not included in ICLE’s one volume publication containing EPIC and the Reporters’ Commentary.

Mark Harder also reported on behalf of Marlaine Teahan that the proposed amendments to the Michigan Court Rules necessitated by the passage of the Michigan Trust Code legislation have been submitted to the Michigan Supreme Court. Ms. Teahan’s report is Attachment 5. It is unclear whether the rules will be finalized before the April 1, 2010 effective date of the Michigan Trust Code.
D. **Ethics and Professional Standards**

1. **Ethics – J. David Kerr**
   
   No report

2. **Unauthorized Practice & Multidisciplinary Practice – Bob Taylor**
   
   Bob Taylor reported that a State Committee on unauthorized practice is meeting shortly. He also noted a recent Ohio decision heavily fining a trust mill for the unauthorized practice.

3. **Specialization and Certification – James B. Steward**
   
   No report

4. **Practice Management – Patricia Ouellette**
   
   No report

E. **Administration of Justice**

1. **Contested and Uncontested Probate Proceedings – Shaheen I. Imami/Douglas G. Chalgian**
   
   Shaheen Imami reported that the committee continues to look at streamlining appellate review of probate court decisions to send nearly all appeals directly to court of appeals and providing better guidance on which matters are eligible for jury trials. The Michigan Probate Judges Association supports the initiative to send most appeals directly to the court of appeals. MPJA continues to also evaluate the development of rules for what will be tried by jury.

2. **Uniformity of Practice – Derek A. Walters**
   
   No report

F. **Practice Issues, Related Areas & Liaisons**

1. **Charitable Giving/Exempt Organizations – Robin D. Ferriby**
   
   No report

2. **Transfer Tax – Thomas F. Sweeney**
   
   Tom Sweeney noted that the IRS had recently issued new final Regulations on deductions under Treas. Regs. 20.2053-4. Mr. Sweeney
will prepare a summary for inclusion in the materials for the November Council meeting.

3. Guardianships and Conservatorships – Constance Brigman

Connie Brigman reported that her Committee continues to look at the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA). She will schedule a conference call for the Committee and report at the November meeting of the Council.


No report

5. Elder Law/Liaison to Elder Law Section – Amy R. Tripp

No report

6. Family Law/Family Law Section Liaison – Patricia M. Ouellette

No report

7. Real Property Law/Real Property Section Liaison – Daniel P. Marsh

In Dan Marsh’s absence John Bos reported that several individuals are looking into Transfer on Death Deeds and adopting a title standard related to their use.

8. State Bar Section to Section Action Team Liaison – Robert Tiplady

No report

9. Tax and Taxation Section Liaison – Lorraine F. New

No report

10. State Bar Liaison – Richard J. Siriani

No report

11. Court Rules and Forms Committee Liaison – Marlaine C. Teahan

Ms. Teahan was absent and had no further report in addition to what was included with the Agenda. Other members of the Committee noted that the Court Rules and Forms Committee continues to review various forms and will report at a future meeting. Members of the Committee reported they have felt frustrated at time about the process and interactions with
court personnel. Mr. Schuitmaker will contact Justice Kelly about these concerns and report back to the Committee.

12. Trust Institutions and Liaison with Michigan Bankers Association – Susan Allan

No report.


Judge Murkowski reported on the MPJA Executive Committee’s recent discussion concerning possible new rules on jury trials and modifying existing rules to send nearly all appeals directly to the court of appeals. The MPJA Executive Committee is favorably inclined regarding each of these matters. Judge Murkowski intends to discuss the possible changes with the Chief Judge of the court of appeals to identify any concerns they might have.

14. Law School Liaison – Josh Ard

No report

IX. Other Business

None

X. Hot Topics

None

XI. Adjournment

There being no further business, the Council meeting was adjourned at 11:25 a.m.

Respectfully submitted

Mark K. Harder
Secretary

HD94611-1
ATTACHMENT 1

Budget
SB 885
(Directed Funeral Arrangements)
ATTACHMENT 3

SB 882
(Statute of Limitations and Repose for Architects, Engineers, Surveyors and Construction Managers)
ATTACHMENT 4

Report on 50th Annual Probate Institute
ATTACHMENT 5

Court Rules and Forms Committee Report