

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

**September 12, 2015  
Lansing, Michigan**

**Minutes**

I. **Call to Order** – The meeting was called to order by the Chair at 10:26. The Section's new Chair, Mr. Imami thanked our outgoing Chair, Ms. Morrissey for her leadership this past year and her 11 years of devotion to the Council. Mr. Bos, ex officio, welcomed Ms. Morrissey to the group of former Chairs.

II. **Attendance.** A total of **4** officers and **13** members of the Council were present, representing a quorum.

**A. The following 4 officers of the Council were in attendance:**

Shaheen I. Imami, Chair  
James B. Steward, Vice Chair  
Marlaine C. Teahan, Secretary  
Marguerite Munson Lentz, Treasurer

**B. The following 13 members of the Council were in attendance:**

Susan M. Allan	Richard C. Mills
W. Josh Ard	Lorraine F. New
Christopher A. Ballard	David L.J.M. Skidmore
Constance L. Brigman	James P. Spica
Mark E. Kellogg	Geoffrey R. Vernon
David P. Lucas	Nancy H. Welber
Raj A. Malviya	

**C. The following members were absent with excuse:**

George F. Bearup	Michele C. Marquardt
Rhonda M. Clark-Kreuer	Patricia M. Ouellette
Hon. Michael L. Jaconette	

**D. The following officers and members were absent without excuse: None**

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

John Bos	Douglas A. Mielock
George W. Gregory	Amy N. Morrissey
Phillip E. Harter	Susan S. Westerman
Nancy L. Little	

III. **Minutes of June 13, 2015 Meeting of the Council – Marlaine C. Teahan.** The minutes of the June 13, 2015 meeting were approved as submitted. Mr. Kellogg move to approve the minutes with support from Mr. Skidmore. The minutes were approved unanimously with no objections.

IV. **Treasurer's Report – Marguerite Munson Lentz.** Overall this year, we have more receipts and less expenses than budgeted; however, we have two months to go for our formal reporting for our 2014-15 year. Ms. Lentz will provide a final report once the SBM closes out the fiscal year and provides the data. The SBM has advised Ms. Lentz that all requests for reimbursement will be due September 21, 2015; generally, all expense reports are due within 45 days of the date the expense was incurred. Expenses are reimbursed for ex officios, officers, and council members.

V. **Chairperson's Report – Shaheen I. Imami.** Mr. Imami thanked the outgoing council members, James Spica, Josh Ard, and Pat Ouellette for their dedication to Council and help in leadership. The new council members were welcomed and thanked for their willingness to take on new leadership positions as committee chairs and liaisons. In the next few weeks the committee list will be revised and circulated at the next meeting and posted on our section webpage. Once in final form, it will also be posted in the Section Journal. To streamline and focus our efforts, Mr. Imami indicated he was combining and renaming some of the committees. The Biennial Plan of Work has also been updated for 2015-2017; this is provided in the agenda of materials each month. Council members should contact Mr. Imami with suggested updates to the Biennial Plan of Work. Reviewing and updating the probate court rules and EPIC is more important than continually adding to our list of things. Mr. Imami's goal this year is to focus on core issues, accomplish them, and not allow ourselves to get spread too thin. Reminder that the Council meeting in October is at Kinglsey Inn, 39475 Woodward Ave., Bloomfield Hills, Michigan.

VI. **Report of the Committee on Special Projects – Christopher A. Ballard**

- A. Mr. Ballard made a motion recommending to Council to supports a draft bill that would add MCL 558.30, abolishing dower, along with companion legislative changes. A straw poll of council members was taken with support shown for this motion. Once a bill is introduced, we will take a formal vote and file a public policy position on this bill. If the legislation is to be voted on before the next Council meeting, we will have an electronic vote.
- B. Mr. Ballard made a motion recommending to Council to support the adoption of the Michigan Fiduciary Access to Digital Assets Act, as drafted with 4 amendments that were detailed to Council. A vote was taken with 17 for, 0 against and 0 abstentions.

The Chair announced that David Lucas will take over as chair for the Committee on Special Projects in the coming year and thanked Mr. Ballard for all his efforts in the past year.

## **VII. Committee Reports**

### **A. Internal Governance**

1. Budget – Marlaine C. Teahan – next week we are meeting and will have budget in October. It was noted that the Membership Committee Budget should be higher as their mission is expanding.
2. Bylaws – Nancy H. Welber – No report.
3. Awards – Douglas A. Mielock – No report.
4. Planning -- Shaheen I. Imami – No report.
5. Nominating – George W. Gregory reported that their work for this year is complete.
6. Annual Meeting – Shaheen I. Imami – No report.

### **B. Legislation and Lobbying**

1. Legislation – William J. Ard reported on SB 62 which will provide for the electronic recording of deeds; SB 270 guardianship jurisdiction – to clarify that the courts can have jurisdiction over a resident out of state.
2. Updating Michigan Law – Geoffrey R. Vernon reported on the following items:
  - The pre-death probate litigation legislation discussion will be tabled. Sen. Schuitmaker has been consulted on this issue.
  - The Committee has engaged in ongoing discussions with LSB on the draft language to be used in the Qualified Dispositions in Trust Act. We have a sponsor for this bill.
  - More will be discussed on the tenancy by the entireties issues later this fall. At prior CSP meetings, definitions of TBE to include all types of personal property. The TBE trust statute is still an ongoing issue and Mr. Vernon and Mr. Imami have recently discussed this as a priority issue.
  - The dower bill was already discussed and Council will be advised as that develops in the Legislature.
  - Mr. Siriani raised the issue of the upward adjustment of certain dollar amounts in MCL 700.5102 with an annual COLA adjustment. Mr. Vernon indicated that this section, and the upward adjustment of other dollar amounts in EPIC, is being reviewed. These sections are being considered as part of an overall update to EPIC.
3. Insurance Legislation Ad Hoc Committee – Geoffrey R. Vernon.
  - The ILIT trustee exoneration statute is still in the drafting stages at LSB and a sponsor will be found.

4. Artificial Reproductive Technology Ad Hoc Committee – Nancy H. Welber. The committee will have a report in October.

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

1. Amicus Curiae – David L. Skidmore discussed the amicus application submitted to the committee on the Perry case. A motion was made by Mr. Bos with support from Mr. Gregory to have the Council hire a firm to prepare an amicus brief in support of an application for leave to appeal. The Chair instructed the committee to provide the application and supporting materials to Council with a committee recommendation; therefore, Mr. Gregory withdrew his support for the motion. We need action by the end of September and will most likely need to handle this by an electronic vote.<sup>1</sup>

At next month's meeting, the Committee will report on the status of the amicus brief for the *In re Filibeck Estate* that was approved in June.

2. Probate Institute – James B. Steward. Ms. Teahan reported that she met with ICLE staff and the annual Institute is taking shape. Council members commented on suggested topics and speakers. Ms. Teahan will consider these additional suggestions with ICLE.
3. State Bar and Section Journals – Richard C. Mills reported on a contract with William S. Hein for online publication of our section journal and made a motion for this contract to be approved with support from Ms. Brigman. Much discussion followed including the fact that Mr. Flood of the SBM has approved this contract. Copyright issues, and choice of law for the contract were discussed. The Chair called the question. The vote was 14 in favor, 2 against, 0 abstentions; note that 1 council member was no longer present at the meeting to vote.
4. Citizens Outreach – Constance L. Brigman reported on discussions with the SBM on the online brochures. Certain copyright issues need to be resolved before we can move forward.
5. Electronic Communications – William J. Ard reported that we need to keep our webpage updated. The new committee chair will be Michael Lichterman; he will be in charge of keeping the secretary informed as to what changed should be made to the section webpage. The secretary will then direct the SBM to update the website.
6. Membership – Raj A. Malviya referenced the written Membership Committee Report in the agenda. Discussion ensued on the survey given at the 2015 annual Institute. Over 80 surveys were completed. The social event held at Smith Haughey was a huge success; many thanks to the firm,

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<sup>1</sup> Secretary's Note: After the Council meeting, Mr. Imami requested the Committee to reconvene on this amicus application as the Committee's Chair recused himself due to a conflict of interest. The Committee will meet again and report a new recommendation to Council, without participation of the Committee's chair.

Nick Reister and George Bearup. Approximately 80 people attended the social event. Mr. Malviya received positive feedback on the event. lots of kudos. The free section membership was discussed; clarification on the State Bar's policy will be obtained.

There were several suggestions for improvement in the survey responses that were specifically discussed:

- More information is desired on meetings, resources, and social events. Mr. Malviya indicated that the committee will work to create awareness of the Section's opportunities.
- There was criticism on how many listservs there are that deal with the same topics for the same audience.
- Several comments related to having Council meetings made more accessible. This issue was the topic of the several committees over the last couple of years. Many physical location and electronic options were considered in detail by these committees. These issues will continually be monitored but at this time, the work of the committees and the consensus of the Council is that in person meetings are best.

Mr. Malviya is looking for more committee members.

**D. Ethics and Professional Standards**

1. Ethics – David P. Lucas – No report. The new committee chair will be Katie Lynwood.
2. Unauthorized Practice of Law & Multidisciplinary Practice – Patricia M. Ouellette – No report. This committee will be collapsed into Ethics.
3. Specialization and Certification Ad Hoc Committee – James B. Steward – reported that after discussion with the officers, the consensus was that this Committee will no longer be continued. Our Section cannot do this alone. The continuing legal education piece is difficult. ICLE and SBM weighed in on this and it would be very difficult given fact that Michigan has no continuing legal education requirement. In addition, the pushback from general membership of state bar also made this project difficult. The work of the Committee will be preserved for future reference and possible use.

**E. Administration of Justice**

1. Court Rules, Procedures and Forms – Michele C. Marquardt is stepping down as chair and David Skidmore will be taking over.
2. Fiduciary Exception to Attorney Client Privilege Ad Hoc Committee – George F. Bearup – No report.

**F. Areas of Practice**

1. Real Estate – George F. Bearup. No report. Mark Kellogg will take over as chair.

2. Transfer Tax Committee – Lorraine F. New reported on two Tax Nuggets in materials basis reporting and the fact that the IRS will no longer be issuing closing letters for Forms 706.
3. Charitable and Exempt Organization – Lorraine F. New – No report. Chris Caldwell will take over as chair.
4. Guardianship, Conservatorship, and End of Life Committee – No report.

**G. Liaisons**

1. Alternative Dispute Resolution Section Liaison – Milton L. Mack, Jr. – No report.
2. Business Law Section Liaison – John R. Dresser – No report.
3. Elder Law and Disability Rights Section Liaison – Amy R. Tripp – No report.
4. Family Law Section Liaison – Patricia M. Ouellette – No report.
5. ICLE Liaison – Jeanne Murphy – No report.
6. Law Schools Liaison – William J. Ard – No report.
7. Michigan Bankers Association Liaison – Susan M. Allan – No report.
8. Michigan Probate Judges Association Liaisons – Hon. Judge David M. Murkowski, Hon. Michael L. Jaconette – No report.
9. Probate Registers Liaison – Rebecca A. Schnelz – No report.
10. SCAO Liaisons – Constance L. Brigman, Michele C. Marquardt, Rebecca A. Schnelz – No report.
11. Solutions on Self-Help Task Force Liaison – Rebecca A. Schnelz – No report. Kathy will take over.
12. State Bar Liaison – Richard J. Siriani – No report.
13. Taxation Section Liaison – George W. Gregory reported that progress has been made on the draft RAB 2015-XX regarding Taxability of Income to Estates, Trusts or Beneficiaries. Mr. Gregory is hoping that Mr. Joslyn will write an article on this topic for our Section Journal.

VII. **Other Business** – Ms. Little brought up the Michael Irish Award; discussion followed.

VIII. **Hot Topics** – None.

IX. **Adjournment. The chair adjourned the meeting at 12:08**