

Meeting of the Council of the  
Probate and Estate Planning Section of  
the State Bar of Michigan

September 8, 2018  
Lansing, Michigan

Minutes

I. Call to Order

The Chair (chairperson) of the Council, Marguerite Munson Lentz, called the meeting to order at 10:50am.

II. Introduction of Guests

- A. Meeting attendees introduced themselves.
- B. The following officers and members of the Council were present: Marquerite Munson Lentz, Chair; David P. Lucas, Secretary; David L.J.M. Skidmore, Treasurer; Kathleen M. Goetsch, Angela M. Hentkowski, Robert B. Labe, Michael G. Lichterman, Katie Lynwood, Raj A. Malviya, Andy Mayoras, Richard C. Mills, Lorraine F. New, Kurt A. Olson, Nathan R. Piwowarski, and Christine M. Savage. A total of 15 Council officers and members were present, constituting a quorum.
- C. The following ex-officio members of the Council were present: Robert D. Brower, Jr., George W. Gregory, Nancy L. Little, Douglas A. Mielock, and Marlaine Teahan.
- D. The following liaisons to the Council were present: Daniel W. Borst, Susan Chalgian, John R. Dresser, Jeanne Murphy, and James P. Spica.
- E. Others present: J.V. Anderton, Ernschie Augustin, Aaron Bartell, Ryan Bourjaily, Georgette David, Jim Hughesian, Adam Lowen, Alex Mallory, Neal Nusholtz, Ken Silver, Paul Vaidya, and Joe Weiler.

III. Excused Absences

The following officers and members of the Council were absent: Christopher A. Ballard, Vice Chair; Christopher J. Caldwell, Rhonda Clark-Kreuer, Nazneen Hasan, Hon. Michael Jaconette, Mark E. Kellogg, and Melisa M.W. Mysliwiec.

IV. Lobbyist Report - Public Affairs Associates

The Chair stated that there was no Lobbyist Report to present to the meeting.

V. Monthly Reports:

- A. Minutes of Prior Council Meeting (David P. Lucas): it was moved and seconded to approve the Minutes of the June 16, 2018 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.
- B. Chair's Report: The Chair welcomed incoming Council members. The Chair thanked Marlaine Teahan for her service to the Section and the Council, and presented Ms. Teahan with a plaque expressing appreciation. The Chair thanked Rhonda Clark-Kreuer for her service.

- 1. The following motion was properly made and seconded:

The Chair of the Council is authorized to appoint the Chairs of the respective Committees of the Council.

Following discussion, on voice vote, the Chair declared the motion approved.

- 2. The following motion was properly made and seconded:

Certain committees will be populated with certain Officers and ex-officios, as described in the Chair's written report.

Following discussion, on voice vote, the Chair declared the motion approved.

- 3. The following motion was properly made and seconded:

The Chair of each Committee of the Council not mentioned in the prior motion is authorized to appoint the members of their respective Committees.

An amendment to the motion was accepted by the movant and the second, so that, following such accepted amendment, the motion is:

The Chair of each Committee of the Council not mentioned in the prior motion is authorized to appoint the members of their respective Committees, following consultation with the Chair of the Council.

Following discussion, on voice vote, the Chair declared the motion approved.

- 4. The following motion was properly made and seconded:

The name of the Council's Mardigian Case Review & Drafting Ad Hoc Committee is changed to the Lawyer/drafter beneficiary ad hoc Committee.

Without objection, the Chair declared the motion approved.

5. The following motion was properly made and seconded:

The Chair and the Chair-Elect are authorized to create or delete Ad Hoc Committees as they determine in their discretion and to modify the mission of any Committee as they determine in their discretion.

Without objection, the Chair declared the motion approved.

6. The Chair gave a report, including matters described in the Chair's written report, which was included with the meeting materials

C. Committee on Special Projects

1. Nathan Piwowarski and Katie Lynwood discussed the EPIC Omnibus legislation as prepared by the Legislative Service Bureau, as included in the meeting materials. The Committee's motion is:

The Probate and Estate Planning Section supports "A bill to amend 1998 PA 386, entitled 'Estates and protected individuals code,' by amending ..., " identified by the Legislative Service Bureau as "06613 '18 Draft 1", but changed as follows:

1. increase each reference of "\$15,000.00" in EPIC section 3982 to "\$25,000.00";
2. add the phrase "if that charitable purpose is a material purpose of the trust" to the end of EPIC section 7103(c);
3. replace the proposed language in section EPIC section 7103(g) with the following:

(g) Except as provided in subparagraph (iv), "qualified trust beneficiary" means a trust beneficiary the settlor's (or settlors') intent to benefit whom is a material purpose of the trust, and at least one of subparagraphs (i) through (iii) applies on the date the trust beneficiary's qualification is determined:

(i) The trust beneficiary is a distributee or permissible distributee of trust income or principal.

(ii) The trust beneficiary would be a distributee or permissible distributee of trust income or principal if the interest of the

distributees under the trust described in subparagraph (i) terminated on that date without causing the trust to terminate.

(iii) The trust beneficiary would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(iv) If on the date the trust beneficiary's qualification is determined, there is no beneficiary of the trust described in subparagraph (i), (ii), or (iii) the settlor's (or settlors') intent to benefit whom is a material purpose of the trust, then the term qualified trust beneficiary means merely a trust beneficiary to whom at least one of subparagraphs (i) through (iii) applies on that date.

The Chair of the Probate and Estate Planning Section's Committee on Special Projects is authorized to modify the Section's public policy position with nonsubstantive changes, as determined by such Chair.

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 15 in favor of the motion, 0 opposed to the motion, 0 abstaining, and 7 not voting. The Chair declared the motion approved.

2. Neal Nusholtz reported on legislation regarding community property trusts.
3. Christine Savage reported on legislation regarding marital agreements.
4. Nathan Piwowarski and Aaron Bartell reported on legislation regarding "prebate."

D. Legislative Analysis & Monitoring Committee (Ryan Bourjaily)

Dan Hilker reported on activity of the Legislative Analysis & Monitoring Committee.

E. Legislative Development and Drafting Committee (Nathan Piwowarski)

Nathan Piwowarski reported on activity of the Legislative Development and Drafting Committee, including activity regarding certificates of existence of trust, and a legislative proposal relating to such certificates, HB 5362. Mr. Piwowarski reported that HB 5362 removes a requirement that such a certificate state whether or not a trust is revocable, and, if revocable, who holds the power to revoke (currently appearing as EPIC section 7913(1)(d)), which change is supported in a Public Policy Position of the Section, but to which such change there is substantial objection by certain persons, including representatives of the Michigan Bankers Association. The Committee's motion is :

The Probate and Estate Planning Section's Public Policy Position regarding certificates of existence of trust, as reflected in HB 5362, may be modified with

respect to EPIC section 7913(1)(d) at the discretion of the Chair of the Legislative Development and Drafting Committee; any such modification will be reported to the Council by the Chair of the Legislative Development and Drafting Committee.

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 15 in favor of the motion, 0 opposed to the motion, 0 abstaining, and 7 not voting. The Chair declared the motion approved.

VI. Other Committees Presenting Oral Reports

A. Tax Committee (Christopher J. Caldwell)

Raj Malviya referred to the Committee's written report, which was included with the meeting materials.

B. Membership Committee (Robert B. Labe)

Robert Labe reported on the activity of the Committee, including an update on networking luncheons, sponsored by the Section, to be held in Plymouth and Grand Rapids, to encourage membership in the Section.

C. Amicus Curiae Committee (David L.J.M. Skidmore)

David L.J.M Skidmore reported that a request for an amicus from the Section has been requested in a matter before the Michigan Court of Appeals, captioned "Lewis v. Rosebrook," Court of Appeals No. 343765. Individuals associated with the Chalgian and the Varnum law firms, which firms represent the parties, were asked to excuse themselves from the meeting, and did so. The Committee's motion is:

The Probate and Estate Planning Section declines to authorize the preparation and filing of an amicus brief in the matter before the Michigan Court of Appeals, captioned "Lewis v. Rosebrook," Court of Appeals No. 343765.

Following a presentation by Mr. Skidmore and discussion by the Council, on voice vote with no nays and no abstentions (any individuals associated with the Chalgian and the Varnum law firms not present and not voting), the Chair declared the motion approved. The Chair asked Mr. Skidmore to relay the Council's action to the persons requesting an amicus brief.

VII. Other Committees Presenting Written Reports Only

The Chair stated that there were written reports from the following Committees:

A. Court Rules, Forms, and Procedures Committee

- B. Divided and Directed Trusteeships Ad Hoc Committee
- C. Uniform Fiduciary Income & Principal Act Ad Hoc Committee
- D. Report from the Liaison to the Uniform Law Commission

Those reports were included with included in the meeting agenda materials, and the Chair referred Council members to such reports. The Chair stated that no action of the Council was requested by such Committees.

VIII. Other Business

The Chair requested a volunteer to Chair the Council's Electronic Wills Ad Hoc Committee.

Mr. Skidmore presented a Treasurer's Report, which was included with a supplement to the meeting agenda materials.

IX. Adjournment

Seeing no other matters or business to be brought before the meeting, the Chair declared the meeting adjourned at 11:25 am.

Respectfully submitted,  
David P. Lucas, Secretary