

**Probate and Estate Planning Section  
State Bar of Michigan**

**NOTICE OF MEETING**

**Saturday, June 17, 2006**

**9:00 a.m. Meeting of Committee on Special Projects**

**10:15 a.m. Council Meeting**

There will be a meeting of the Committee on Special Projects on **June 17, 2006** at the University Club in East Lansing, Michigan, beginning at 9:00 a.m., followed by a Meeting of the Council of the Probate and Estate Planning Section at 10:15 a.m.

*Please return the confirmation card enclosed with this mailing to Michael J. McClory to indicate whether you will attend.*

Future meetings are scheduled for the following dates and times:

September 16, 2006

Nancy L. Little  
Secretary

**MINUTES OF THE MEETING OF THE COUNCIL  
OF THE PROBATE AND ESTATE PLANNING SECTION**

**April 22, 2006 10:15 a.m.  
East Lansing, Michigan**

- I.** The meeting was called to order by the chair, Michael J. McClory, at 10:15am.
- II. A. Council Members Excused:** Robin Ferriby, Lisa Langton, Thomas Sweeney

**B. Council Officers and Members Present:**

Michael J. McClory	Douglas Mielock	
Lauren M. Underwood	Nancy L. Little	Harold G. Schuitmaker

Douglas G. Chalgian	Ellen Sugrue Hyman
Daniel E. Cogan	Shaheen I. Imami
George A. Cooney, Jr.	
John R. Dresser	Marilyn A. Lankfer
Christopher L. Edgar	Amy N. Morrissey
	Kenneth J. Seavoy
Sebastian V. Grassi, Jr.	Richard J. Siriani
George W. Gregory	
Mark K. Harder	Joan C. Von Handorf

**C. Others Present:** Josh Ard, Rebecca Bechler, Kim Cahill, Samuel Carpenter, Timothy A. Goodnow, Carine J. Hails, Tim Harden, Hon. Philip Harter, Mary Hiniker, J. David Kerr, Ken Kingma, Phyllis Klinger, Anne Liefer, J.R. McGraw, Jeanne Murphy, Chad Nesbit, Lorraine New, Wendy M. Parr, Robert M. Taylor, Rob Tiplady.

- III. Introduction of Guests:** All attendees, including guests, introduced themselves.
- IV. Secretary's Report:** The minutes of the March 11, 2006 meeting were approved.
- V. Treasurer's Report:** No report.

**Chairperson's Report:** Mike congratulated Sebastian Grassi, who has been named to the ALI/ABA Advisory Panel for Trusts and Estates.

Mike reported that he has received a letter from the State Bar Professional Standards Department regarding the formation of an informal work group to

study how to address diminished capacity in practicing attorneys. The Attorney Grievance Commission and the State Bar will be coordinating this group. Mike asked if anyone was interested in serving on the group.

Mike also reported that he, Doug Chalgian, and Harold Schuitmaker have been involved in a couple of issues. First, the Elder Abuse Task Force has been pushing for the registration of durable powers of attorney to be registered with the probate court. The Probate and Estate Planning Section is on the record as opposing this, as is the AARP. There was a meeting on this on April 6, but Mike doesn't think this issue is going anywhere. Second, Doug Chalgian has been working on language for a bill that would establish who has a right to make decisions about funeral arrangements (see attached copy). This bill will put in place a hierarchy for who has authority. It does not allow a person to leave a writing with enforceable requirements for his or her own funeral. Sen. Van Regenmorter's office added some language. Becky Bechler reported there is a meeting on this proposal on April 24; she will keep us posted.

Mike reported the Cherry Capital Cycling Club is helping to sponsor our bike tour at the May probate seminar. Mike asked if we could allocate \$200 to help defray their costs. A motion was made, seconded, and the request was approved.

There is a Public Policy Summit sponsored by the State Bar on April 26. Mike plans to attend and will report back to the Council.

Mike was contacted by a representative of the Senior Attorney Section of the State Bar, which also contacted the Elder Law Section, to suggest a joint project that would address retirement issues for attorneys. Issues would include how to wrap up a practice, maximizing the value of a practice, tail malpractice policies, duties to clients, how long to keep files, etc. Mike is waiting for more information before the Section makes a decision on whether we will participate.

**Report of the Committee on Special Projects:** Mark Harder reported that the CSP discussed five sections of the proposed Michigan Trust Code. The Committee recommended the Council approve proposed Sections 602, 603, and 812. Sections 303 and 1403 are going back to committee for more discussion. A motion was made, seconded, and the Council voted to approve proposed Sections 602, 603, and 812.

A. **Internal Governance**

1. **Budget** – *Harold Schuitmaker/Nancy Little, co-chairs*: No report.
2. **Bylaws** – *Marilyn Lankfer, chair*: No report.

3. **Michael Irish Award** – *Brian V. Howe, chair*: No report.
4. **Long-Range Planning** – *Douglas A. Mielock, chair*: No report.
5. **Nominations** – *Dirk C. Hoffius, chair*: No report.
6. **Relations with the State Bar** – *John Dresser, chair*: Kim Cahill stated she was happy to hear that Mike planned to attend the Public Policy Summit. She suggested we send our incoming Chair to the Leadership Forum of the State Bar in June. Susan McMann at the State Bar is our point person. The State Bar Representative Assembly has a meeting on April 28. The State Bar is looking for committee members; a list of committees is published in the State Bar Journal. Contact Kim if you are interested in serving on a committee. John Dresser reported the State Bar Strategic Plan requires a periodic review of member benefits and as part of that process a review of insurance (of all types) will be coming soon.
7. **Annual Meeting** – *Douglas A. Mielock, chair*: Doug reported that our September Council meeting will be held Saturday, September 16, at the University Club. Our annual organizational meeting will be held October 20-21. Friday night's dinner (Oct. 20) will be at Spartan Stadium; Saturday morning's meeting (Oct. 21) will be at the University Club. More information to follow.

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

1. **Amicus Curiae** – *Mark Harder, chair*: Mark reported the Van Connett brief has been filed. He thanked Ellen Sugrue Hyman for all her help with the brief. Ellen in turn stated that John Burch did a great job.
2. **Continuing Education & Annual Probate Institute** – *Lauren M. Underwood, chair*: In addition to the bike tour Mike already mentioned there will be a wine tour as well as golfing available at the Annual Probate Institute.

Mary Hiniker asked the Council to consider being a named sponsor for the 1<sup>st</sup> Annual Family and Closely Held Business Seminar, which will be held in November. Members of our Section will get a discount on the seminar if the Council acts as a named sponsor. A motion was made, seconded, and the Council voted to approve this request. A copy of the proposed Agenda is enclosed.

Mary also reported that at the Annual Probate Institute there will be an optional seminar Friday afternoon available to participants of

the Probate Certificate Program. The annual speakers' dinner will be Friday night at the Dennon Museum – invitations are on the way.

3. **Section Journal** – *Nancy L. Little, chair*: The next issue is at the printer.
4. **State Bar Journal** – *Lauren M. Underwood, chair*: No report.
5. **Pamphlets** – *Kenneth J. Seavoy, chair*: No report.
6. **Electronic Communication** – *John Dresser, chair*: No report.

#### C. **Legislation and Lobbying**

1. **Legislation** – *Harold Schuitmaker, chair*: Harold thanked Kim Cahill for being an asset to our Section.

Harold reported that PA114 allows a totally and permanently disabled person who is the sole beneficiary of a trust set up by another person to direct the trustee to buy real estate that will qualify for the homestead exemption. Harold stated we may want to take a look at some sections of this statute. George Gregory stated the Elder Law Section has also taken an interest in this statute. Query: What if the disabled person is not the sole beneficiary of the trust? What if the disabled person's spouse or minor children are also beneficiaries?

There was discussion about asking a tax tribunal representative to talk to us regarding the uncapping process when property is transferred to a trust or to an LLC of which the owner is a member. George Gregory reported that tax assessors are more aggressive in some parts of the State than in others. The consensus was there will eventually be legislation on this issue and we should probably get involved up front.

2. **Uniform Trust Code** – *Mark K. Harder, chair*: Mark reported that Article 5 is tabled for the moment. There are about 98 sections of the UTC; all but four have now been reviewed and all but 28 have now been acted on. About half have been approved by the Council. The UTC Committee will be busy next year trying to wrap up this process.
3. **Statute of Repose** – *John A. Scott, chair*: No report.

#### D. **Ethics, Professionalism and Standards**

1. **Ethics** – *Marilyn A. Lankfer, chair*: No report.
2. **Unauthorized Practice & Multidisciplinary Practice** – *Thomas F. Sweeney, chair*: No report.
3. **Specialization and Certification** – *Richard A. Shapack, chair*: In Rich's absence, Mike McClory reported the committee is making progress and has gathered a lot of information. The committee will look at the most recent states who have adopted specialization and certification to see how it was done, who supported and who opposed it, etc. Mike invited anyone who is interested in serving on this committee to contact Rich.
4. **Practice Management** – *Richard J. Siriani, chair*: No report.

E. **Administration of Justice**

1. **Contested and Uncontested Probate Proceedings** – *Amy N. Morrissey, chair*: Amy circulated the March 21, 2006 Order of the Supreme Court (see attached) proposing amendments to MCR 5.104, 5.402, and 5.403. The proposed amendment to MCR 5.402 is the most controversial; it allows service on a parent of a minor who is over the age of 14, regardless of whether there is a conflict of interest. Amy does not know what precipitated these proposals. Mike McClory stated he understood these proposed amendments came from a legal aid group, which brought the proposals to the State Bar Representative Assembly. He understands the Michigan Probate Judges Association is opposing the proposed amendments; however, if the Representative Assembly has already taken a position and approved the substance of the amendments, we cannot challenge it. Kim Cahill will contact Janet Welch to confirm whether or not the Representative Assembly has taken a position and approved the substance of the proposed amendments. If the Section cannot comment adversely, we may still be able to ask them to reconsider their position or worth through other groups such as the Probate Judges Association. The comment period runs through July 1.

A motion was made, seconded, and passed that Amy will confer with Janet Welch as to whether or not the Council can comment on the proposed amendments. A second motion was made, seconded, and passed to empower Amy's committee to formulate a position and, if they reach a consensus, to act on behalf of the Council to carry out their recommendations. We will include our Assembly liaison in this process, because that person has floor privileges with the Representative Assembly.

2. **Uniformity of Practice** – *Sebastian Grassi, Jr./Joan Von Handorf, co-chairs*: Joan reported the committee would like to send out its uniformity of practice survey electronically (draft copy enclosed). The committee anticipates the cost to be about \$600. A motion was made, seconded, and passed to approve payment. The survey will report results by county. Mary Hiniker and Jeanne Murphy will be working with the Committee to refine the survey. Sebastian will donate two books as a prize for a selected participant in the survey.

Sebastian Grassi, Ken Kingma, and George Gregory led a discussion on the Chawla case. The proposed Michigan Trust Code really doesn't address the issue of an insurable interest, and the Chawla decision could be problematic, particularly for irrevocable life insurance trusts. Ken handed out an article and list of questions regarding the case (see attached). He believes we may need some remedial legislation on who has an insurable interest, which would provide that a trustee has an insurable interest in the life of a settlor or beneficiary. Other issues to consider: What about conservators, assignees, nontraditional families? Sebastian reported that a life insurance company can't give a waiver – if there is no insurable interest, the policy is void ab initio.

George suggested we talk to representatives of the insurance industry, including the Life Insurance Association and the Insurance Institute of Michigan, regarding this problem. Becky Bechler can help coordinate this process. Becky will also start putting a bill in draft form to address the concerns raised by the Chawla decision.

The committee needs to decide how expansive the definition of an insurable interest should be. Who must hold the interest? Can it be transferred? Mark Harder made a motion to approve the formation of a committee comprised of Sebastian Grassi, Ken Kingma, and others and authorize them to meet with representatives of the insurance industry and begin work on an open-ended draft of a proposed bill. Marilyn Lankfer and Ken Seavoy supported the motion, and it was passed.

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

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

**Transfer Tax** – *George Gregory, chair*: George reported that the IRS will no longer send confirmation of an extension on a federal estate tax return. However, practitioners can call 866-699-4083 for an update. A copy of the new Form 4768 and Tax Nugget regarding the same is attached to these minutes. Also enclosed is Lorraine New's form for published guidance request.

3. **Guardianships and Conservatorships** – *Douglas A. Chalgian, chair*: No report.
  4. **Business Law and Business Section Liaison** – *John Dresser*: The annual business law institute will be held June 3 and 4 at Soaring Eagle in Mt. Pleasant.  
  
John also reported that Grand Rapids is assessing property taxes against a non-profit nursing center. Stay tuned for more details.
  5. **Court Rules and Forms** – *Harold Schuitmaker/Joan Von Handorf, co-chairs*: No report.
  6. **Elder Law/Elder Law Section Liaison** – *Josh Ard*: Josh reported that the State is in the process of issuing more rules on Medicaid, and will probably start on this process this summer. There have been a couple of estate preservation bills introduced and Josh will keep us posted.
  7. **Family Law/Family Law Section Liaison** – *Pat Ouellette*: No report.
  8. **Michigan Probate Judges Association Liaison** – *Hon. Frederick R. Mulhauser*: No report.
  9. **Real Property Law/Real Property Section Liaison** – *Richard Shapack*: No report.
  10. **State Bar Liaison** – *Kim Cahill*: No report.
  11. **Tax Section Liaison** – *Shirley Kaigler*: No report.
  12. **Trust Institutions and Michigan Bankers Association Liaison** – *Daniel E. Cogan*: No report.
- X. Other Business: None.
- XI. Hot Topics: The State Bar Annual Meeting will be held September 13, 14, and 15.
- XII. The meeting was adjourned at 12:05 pm.

**NEXT MEETING**

**Saturday, September 16, 2006**

**University Club**

**East Lansing, Michigan**

**COUNCIL MEETING AT 9:00 A.M.**

**ANNUAL SECTION MEETING AT 10:15 A.M.**