

**2006-2007 Annual Report of the
Probate and Estate Planning Section of the State Bar of Michigan**

Section Name: Probate & Estate Planning

Mission Statement:

The purpose of this Section shall be to enhance and improve the practice and administration of law pertaining to probate and estate planning by the study of statutes, cases, and procedures, by the consideration, drafting, and active support or opposition of proposed legislation; by the providing of advice to courts during the course of pending litigation; and by the sponsoring of meetings and institutes (together with publishing and disseminating pamphlets, brochures, a Journal of the Section and legal writings) as a means of educating members of the Bar and the public, all in connection with advancing the proper preparation of wills, trusts, tax returns, and other documents; the efficient administration of trusts as well as estates of decedents, minors, incompetents, and missing persons; and the advance planning for the orderly disposition of property, minimization of taxes, and well being of persons.

Officers and Membership:

Chairperson: Douglas A. Mielock
Chairperson Elect: Lauren M. Underwood
Vice Chairperson: Nancy L. Little
Secretary: Harold G. Schuitmaker
Treasurer: George A. Cooney, Jr.

Council Members:

Marlaine C. Teahan
Sebastian J. Grassi, Jr.
Amy N. Morrissey
Thomas F. Sweeney
Joan C. Van Handorf
Rebecca A. Schnelz
Daniel E. Cogan
John R. Dresser
Mark K. Harder
Richard J. Siriani
Robin D. Ferriby
Shaheen I. Imami
Douglas G. Chalgian
George W. Gregory
Marilyn A. Lankfer
Ellen Sugrue Hyman
James B. Steward
Robert P. Tiplady II

2006-07 Council Meeting Schedule (date and location):

All meetings at the University Club, Lansing, Michigan

September 16, 2006

October 21, 2006

November 11, 2006

December 9, 2006

January 20, 2007

February 17, 2007

March 17, 2007

April 21, 2007

June 16, 2007

Events/Seminars:

Highlights of the Probate and Estate Planning Section's activities during 2006-2007 include the following:

Michigan Probate & Estate Planning Journal: Under the able direction of Nancy L. Little, Managing Editor, the Section continued to publish the Michigan Probate & Estate Planning Journal three times a year with the cooperation of the Institute of Continuing Legal Education. The Journal is sent to all members of the Section. The Journal is intended to provide articles on current developments in the areas of wills, trusts, and estates written in a readable and informative style that will aid lawyers in giving their clients accurate, prompt, and efficient counsel.

Economics of Law Practice Survey: Thanks to the generosity of the Community Foundation for Southeast Michigan, an Economics of Law Practice Survey was published in the Winter 2006 edition of the Michigan Probate & Estate Planning Journal. This is the latest version of the fee survey which is conducted periodically by the Section (the last was done in 2001).

Probate and Estate Planning Certificate Program: In 2003, the Probate and Estate Planning Certificate Program was initiated in cooperation with the Institute of Continuing Legal Education (ICLE). Participation continues to exceed initial expectations. The Certificate Program involves a series of educational courses which must be completed within a three-year period.

Uniform Trust Code: The Committee on Special Projects continues to review the Uniform Trust Code for the purpose of drafting a Michigan Trust Code. Mark Harder has done a remarkable job in leading this effort for the past two years. As a result of Mark's efforts and the efforts of the many volunteers on his committee, significant issues of trust law will soon be codified in Michigan. This is important because the use of trusts has grown in recent years, and trust case law in Michigan, as in most states, is thin. Often, there is no clear Michigan case law on particular issues of trust law. A Michigan Trust Code will provide Michigan lawyers, judges, trustees, and beneficiaries with clear, comprehensive, and accessible guidance on questions of trust law.

Legislation: With the help of our lobbyist, the Council has actively monitored and been involved in the legislative process. The Council's work on proposed or current legislation has included:

Insurable Interests: Under the leadership of Ken Kingma, the Council has worked to draft legislation that would protect the clarify insurable interests in life insurance policies. Among other things, such legislation would protect the ability of a trustee of an irrevocable life insurance trust to acquire life insurance on the life of a settlor, an ability that was thrown into question by *Chawla v. Transamerica Occidental Life Ins Co*, No. 03-1215, 2005 US Dist LEXIS 3473 (ED Va Feb 3, 2005), aff'd in part and vacated in part, 440 F3d 639 (4th Cir 2006).

Uniform Power of Attorney Act: In July 2006, the National Conference of Commissioners on Uniform State Laws (NCCUSL) approved the Uniform Power of Attorney Act. Michigan's current power of attorney statute overrides the common law rule to authorize a durable power of attorney, but does not address many of the issues that can arise in the use of a power of attorney. Daniel P. Marsh chairs the Michigan Uniform Power of Attorney Act Committee and has assembled a group of volunteers, including individuals from the banking industry, to study the uniform act to determine whether it should be introduced in Michigan, and if so, what modifications to the uniform act may be appropriate.

TOD for Real Property Act: Also in July 2006, NCCUSL formed a new drafting committee on TOD for Real Property Act, which will draft an act that will permit real property to be transferred immediately upon death by beneficiary designation, similar to beneficiary designations for securities permitted in Michigan pursuant to Sections 6301-6310 of the Estates and Protected Individuals Code. At least eight states have statutes permitting this type of real estate transfer on death. Josh Ard is chair of the committee studying the possible introduction of beneficiary deed legislation in Michigan.

Repeal of the Rule Against Perpetuities: The common law Rule Against Perpetuities (no interest is good unless it must vest, if at all, not later than 21 years after some life in being at the creation of the interest) has been modified in Michigan through the adoption of the Uniform Statutory Rule Against Perpetuities. However, the general restriction on dead hand control persists. Inspired in large part by clients' desires to create dynasty trusts, by the end of 2005 twenty-one states had abolished the Rule Against Perpetuities. See Schanzenbach and Sitkoff, *Perpetuities or Taxes? - Explaining the Rise of the Perpetual Trust*, 27 *Cardozo Law Review* 2465, 2466 (2006). In 2006, legislation was introduced that would have abolished the Rule Against Perpetuities in Michigan. The Council did not participate in the introduction of this legislation, but did get involved in advising its sponsor of potential problems with the legislation as drafted (e.g.,

the Delaware tax trap). Many consider Michigan banks to be at a disadvantage in competing to retain trust business in Michigan when so many other states have no rule against perpetuities. The Council has endorsed the repeal of Michigan's rule against perpetuities. Amy Morrissey serves as the chair of a the Rule Against Perpetuities Committee, which will study the proper repeal of Michigan's Rule Against Perpetuities.

Uniformity of Practice/Court Rules/Court Forms: The difference in practices among the probate courts can pose challenges and create frustration. Fortunately, Joan Von Handorf and Sebastian V. Grassi, Jr., as co-chairs of the Uniformity of Practice Committee, have made significant progress over the past few years in identifying the specific instances of non-uniformity among the probate courts and, in many instances, bringing greater uniformity to the practices and requirements of the probate courts. The Section has also reviewed and commented on numerous proposed amendments to the Michigan Court Rules affecting probate court procedure.

Unauthorized Practice of Law: Guided by Thomas F. Sweeney and Ellen Sugrue Hyman, the Section has increased its focus on the growing problem of the unauthorized practice of law in the area of estate planning. In the past, this problem has principally taken the form of trust mills operated by non-attorneys who prepare estate planning documents for individuals. To avoid prosecution for the unauthorized practice of law, many of these operations have now chosen to recruit Michigan attorneys to participate in their activities. With the assistance of Catherine M. O'Connell and Victoria Kremski at the State Bar of Michigan, the Section has increased its efforts to educate its attorneys and the general public on the problems in this area.

Probate List Serve: Our Section has continued the list serve begun a few years ago under the direction of Josh Ard. The list serve provides an efficient method by which our members may share information on probate and estate planning issues.

Specialization and Certification: Led by Shaheen Imami, the Council, with assistance from ICLE, is continuing to investigate the possibility of proposing a State-Bar sponsored specialization in Probate Administration and Estate Planning. A Council Committee is conducting an ongoing analysis of the economic feasibility and an evaluation of whether this is on balance desirable for the Section.

Participation and Responding to Section Needs: The Probate Council strives to respond to the needs of our Section, and to improve the Probate and Estate Planning practice in Michigan. We welcome participation in the Council. Our meetings are held approximately once a month on Saturday mornings at the University Club in Lansing. The Committee on Special Projects typically begins its meeting at 8:30 a.m. or 9:00 a.m. The Probate and Estate Planning Council typically begins its meeting at 10:30 a.m. and ends its meeting at Noon. A full list of meeting dates is included in the Michigan Probate & Estate Planning Journal and posted on our Section's website.

Article VIII, § 1

Every Section and State Bar entity so directed by the Board of Commissioners or Representative Assembly shall annually make a written report containing a summary of its activities during the association year which shall be submitted to the Secretary on or before May 31. Annual reports may not exceed five 8 1/2" x 11" pages unless a waiver of this limitation is approved by the Executive Director.

Please submit your report via e-mail to smcmann@mail.michbar.org

You may contact the Chairperson, Douglas A. Mielock, at:

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