

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

NOTICE OF MEETING

Saturday, September 16, 2006

9:00 a.m. Council Meeting

10:15 a.m. Annual Meeting of the Probate and Estate Planning Section

There will be a meeting of the Council of the Probate and Estate Planning Section on **September 16, 2006** at the University Club in East Lansing, Michigan, beginning at 9:00 a.m., followed by the Annual Meeting 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.

Nancy L. Little
Secretary

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

**June 17, 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:** Christopher Edgar, George W. Gregory, Mark K. Harder, Lisa Langton, Kenneth J. Seavoy, Thomas F. Sweeney
- B. Council Officers and Members Present:**
- | | | |
|--------------------------|-----------------------|---------------------|
| Michael J. McClory | Douglas A. 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 | |
| | Amy N. Morrissey | |
| Robin D. Ferriby | | |
| Sebastian V. Grassi, Jr. | Richard J. Siriani | |
| | Joan C. Von Handorf | |
- C. Others Present:** Cynthia Andrews, Josh Ard, Rebecca Bechler, John E. Bos, Sam Carpenter, Lynn Chard, Timothy A. Goodman, Henry Grix, Hon. Philip Harter, J. David Kerr, Michelle Lane, Marguerite M. Lentz, Dan Marsh, Jeanne Murphy, Hon. Allen Nelson, Kurt A. Olson, Patricia Ouellette, Russell Paquette, Christine M. Savage, Teresa Shafer Sullivan, Marlaine C. Teahan, Robert Tiplady
- III. Introduction of Guests:** All attendees, including guests, introduced themselves.
- IV. Secretary's Report:** The minutes of the April 22, 2006 meeting were approved.
- V. Treasurer's Report:** Mike McClory reported that he received the May 2006 financial reports the day before the meeting. These reports are attached to the minutes.
- VI. Chairperson's Report:** Mike reported that during renovations at the Wayne County Probate Court, there will be a temporary change to the normal work

flow beginning Monday, June 26 and ending in early September. A number of office functions have been temporarily relocated within the court. The Detroit Legal News and former Room 1307 have temporarily relocated to the 6th Floor, and the Microfilm Department has moved to where the Order Department was formerly located.

As previously discussed and approved by the Council, there will be an additional \$5 increase in the State Bar Probate Section dues for 2006-2007.

Mike recognized Russell Paquette, our senior past chair, and thanked him for his contributions to the vitality of the Council, as well as his impact on probate law in the State of Michigan.

The President of the State Bar, Tom Cranmer, will be contributing an article to the Journal about the Practice Management Resource Center at the State Bar. The Resource Center provides information and guidance for law practices.

Mike reported that a new bill, SB1272, has been introduced. This bill (attached to these minutes) would require a person seeking appointment as a guardian or conservator to provide the court with criminal history background checks from the State Police as well as the FBI. Jim Gamble contacted Mike to raise concerns about this bill, which was discussed in more detail at the Committee on Special Projects (see immediately following).

VII. Report of the Committee on Special Projects: The Committee on Special Projects addressed two issues:

1. The Committee recommended the Council support the proposed court rule amendments from the Uniformity of Practice Committee, as amended. It was moved and supported, and the Council so voted.
2. The Committee also recommended the Council not support SB1272. There was discussion about whether the Council should oppose the bill or simply not support it. Major concerns raised include (a) with approximately 50,000 guardianship and conservatorship cases each year, this requirement will overwhelm a probate court system that is already strained financially does not have the resources to manage this requirement, (b) people are already intimidated by the court system, and if they have to undergo background checks, people may be even more hesitant to seek appointment in cases where it is appropriate, and (c) there are currently procedural safeguards in place that the courts make exercise if the situation is appropriate. It was moved and supported that the Council oppose the bill, and the Council so voted, 11-3. Shaheen Imami noted that we should carefully consider what form our opposition takes, because we don't want to give the impression that the Council does not

care about the backgrounds of guardians. John Bos asked if there has been a situation that prompted this bill. No one is aware of a particular case. Mike stated that our concerns can be expressed on the Public Policy website. Becky suggested that the Council needs to make its concerns known immediately because the Republican party is pushing for background checks of persons who have access to vulnerable citizens (i.e. school bus drivers, nursing home workers, etc.). Becky suggested we do a letter expressing our concern with the bill as introduced, setting forth our specific areas of concern.

VIII. Standing Committee Reports

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*: Henry Grix presented the report of the Nominating Committee (attached). Nominees for next year's officers are: Chairperson – Doug Mielock; Chair-Person Election – Lauren Underwood, Vice Chair Person – Nancy Little; Secretary – Harold Schuitmaker; Treasurer – George Cooney. Henry extended a thank you to Chris Edgar and Ken Seavoy, whose terms are ending this year. Both Chris and Ken have been active and valuable members of the Council. With Chris and Ken's departure, and George Cooney's move to Treasurer, and the ending of the terms for Douglas G. Chalgian, George W. Gregory, Marilyn Lankfer and Ellen Sugrue-Hyman, the Council has seven vacant positions. The Committee proposed James B. Steward, Ellen Sugrue-Hyman and Robert P. Tiplady II for their first three-year term, Douglas G. Chalgian, George W. Gregory, and Marilyn Lanfer for their second three-year term and, if the Council adopts the officer recommendations which include George Cooney's move to Treasurer, Marlaine C. Teahan for a one-year term to complete the unexpired portion of George A. Cooney's term. There were no nominations from the floor. Rich Siriani seconded the Nominating Committees' report and the Council voted unanimously to adopt the recommendations of the Nominating Committee.
6. **Relations with the State Bar** – *John Dresser, chair*: No report.
7. **Annual Meeting** – *Douglas A. Mielock, chair*: Doug reported that the annual meeting of the Section will be held September 16 at the University

Club. The organizational meeting will be held October 21. Doug will confirm the dates of the remaining meetings for 2006-2007.

B. Education & Advocacy Services for Section Members

1. **Amicus Curiae** – *Mark Harder, chair*: No report.
2. **Continuing Education & Annual Probate Institute** – *Lauren M. Underwood, chair*: Lauren reported “IT’S OVER!” Mike thanked Lauren for a job well done. Next year’s May seminar will be held May 17-19 at Grand Traverse and the Detroit seminar will be held in Plymouth at the St. Johns Conference Center on June 8-9. There was a general discussion about whether there are other venues available for the May meeting.
3. **Section Journal** – *Nancy L. Little, chair*: No report.
4. **State Bar Journal** – *Lauren M. Underwood, chair*: No report.
5. **Pamphlets** – *Kenneth J. Seavoy, chair*: The Council recognized Ken’s many contributions during his term, especially in getting our pamphlets up-to-date and available for practitioners.
6. **Electronic Communication** – *John Dresser, chair*: No report.

C. Legislation and Lobbying

1. **Legislation** – *Harold Schuitmaker, chair*: Harold led a discussion on two bills:
 - a. HB5677 (attached): This bill affects durable powers of attorney. Harold reported that he has spoken with Becky Bechler and Rep. Tonya Schuitmaker. He doesn’t think this bill is going anywhere right now, but the Council should be prepared to take a position on it if it moves in September. There was a discussion about whether we should form a committee to study this bill now. Mike said he has an outline of the issues and the bill is not close to fruition now. Ellen volunteered to serve with Mike and Harold if a committee is needed to study this bill.
 - b. HB5836 (attached). This bill addresses who may make funeral and burial arrangements for a decedent. Harold reported that if the bill is to pass, it will happen soon. [Note: the bill was signed into law and became effective July 20, 2006, 2006 PA 299]. Doug Chalgian circulated a summary of legislation introduced in Ohio re: this topic (enclosed).

Harold reported that Rep. Schuitmaker has been approached by Green Leaf Trust to introduce anti-perpetuities legislation. Dan Cogan reported that the

Michigan Bankers Association is considering joining forces with Green Leaf, because the enactment of such legislation would help keep trust business in Michigan.

Harold also reported that he is not sure where Sen. Bishop is on the life insurance/insurable interest issue. Ken Kingma, Mike Hughes, and George Gregory are working on this.

2. **Uniform Trust Code** – *Mark K. Harder, chair*: Marilyn Lankfer reported that the Committee hopes to have this wrapped up in two years.

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*: No report.

4. **Practice Management** – *Richard J. Siriani, chair*: No report. Mike thanked Rich and the Committee for all the work they have done this year on the court rules.

E. **Administration of Justice**

1. **Contested and Uncontested Probate Proceedings** – *Amy N. Morrissey, chair*: Amy reported on the March 21, 2006 Order of the Supreme Court which proposed amendments to guardianship rules. The State Bar Representative Assembly voted on technical amendments and to take comments from other groups. Amy and the Committee are not sure if we can comment; the Executive Committee of the Representative Assembly will be meeting in late June and will let Mike McClory know. Amy said the Order came from the Justice Initiatives Group and was brought directly to the Representative Assembly. Mike stated he would like to have a meeting with Janet Welch to discuss the possible formation of a filter committee so the Council isn't blindsided on such issues in the future.

2. **Uniformity of Practice** – *Sebastian Grassi, Jr./Joan Von Handorf, co-chairs*: Joan reported there have been 274 responses to the Committee's electronic survey on the uniformity of practice, with two more weeks for responses. The Committee has responses from 47 counties, but would like to get responses from all 83. Joan will try to contact counties directly if she does not get

responses for all counties. Mike suggested that Joan and Sebastian try to get on the Probate Registers' agenda for their annual meeting.

Joan also reported that she has put together four new forms which will be submitted to SCAO.

Sebastian spoke to a group of 75 Macomb County lawyers and judges about trustee duties and also spoke to the Michigan ACTEC group. Mike suggested Sebastian try to get this issue on the agenda with the Michigan Probate Judges' Association. Sebastian indicated he would like to get input from the probate judges.

Mike thanked Sebastian and Joan for their service to the Council during the year.

F. Practice Issues, Related Areas & Liaisons

1. **Charitable Giving/Exempt Organizations** – *Robin D. Ferriby, chair*: Robin gave an update on recent changes to federal tax laws regarding charitable giving.

HB6153 (enclosed) was recently introduced, probably as a result of articles in the Detroit newspapers highlighting the fact that the Ford Foundation, founded by the Detroit Ford family, is now located in New York and makes most of its distributions to charities that are not located in Michigan. Becky reported that this bill is unlikely to go any further. It would discourage the formation of Michigan foundations by removing flexibility for a foundation to adapt to changing circumstances.

Robin suggested the Council appoint members to a task force to develop a white paper regarding donor intent.

Robin also reported that the economic survey is done, and he will be forwarding it for publication in the Journal.

2. **Transfer Tax** – *George Gregory, chair*: George presented Tax Nuggets regarding the Estate of Lillian Rosen.

Sebastian reported that the “kiddie tax” age limited increased from 14 to 18 years, effective January 1, 2006 and the capital gains rate of 15% has been extended another two years. He also reported on recent changes that permit the conversion of an existing IRA into a Roth IRA, with payment of taxes now.

3. **Guardianships and Conservatorships** – *Douglas A. Chalgian, chair*: No report.

4. **Business Law and Business Section Liaison** – *John Dresser*: No report.
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 he and Doug Chalgian had a meeting with representatives of the Executive Branch regarding the administration’s policy on the federal law changes to Medicaid. If the state adopts these changes, it probably will not happen until this fall and probably won’t be retrospective.
7. **Family Law/Family Law Section Liaison** – *Pat Ouellette*: No report.
8. **Real Property Law/Real Property Section Liaison** – *Richard Shapack*: There is a lot of Proposal A uncapping in West Bloomfield. People are starting to do more and more Lady Bird deeds to get around this problem.
9. **State Bar Liaison** – *Kim Cahill*: No report.
10. **Tax Section Liaison** – *Shirley Kaigler*: No report.
11. **Trust Institutions and Michigan Bankers Association Liaison** – *Daniel E. Cogan*: Dan reported that the Michigan Bankers Association is adjourned until September, when they will resume work on perpetuities reform.

IX. Other Business – None

XI. Hot Topics – None

XII. Adjournment

NEXT MEETING

Saturday, September 16, 2006

University Club

East Lansing, Michigan

COUNCIL MEETING AT 9:00 A.M.

**ANNUAL MEETING OF THE PROBATE AND ESTATE PLANNING SECTION
AT 10:15 A.M.**