

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

NOTICE OF MEETING

Saturday, April 22, 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 **April 22, 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:

June 17, 2006

Nancy L. Little
Secretary

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

**March 11, 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: Daniel E. Cogan, George A. Cooney, Jr., Christopher L. Edgar, Robin D. Ferriby, Sebastian V. Grassi, Jr., Marilyn A. Lankfer, Kenneth J. Seavoy, Richard J. Siriani

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

Shaheen I. Imami

Lisa Langton

John R. Dresser

Amy N. Morrissey

George W. Gregory

Thomas F. Sweeney

Mark K. Harder

Joan C. Von Handorf

C. Others Present: Cynthia Andrews, Josh Ard, Jim Bauer, Rebecca Bechler, Ronald Berridge, Chris Brown, Lynn Chard, Timothy A. Goodnow, Carine J. Hails, Tim Hardin, Hon. Philip Harter, J. David Kerr, Ken Kingma, Marguerite Munson Lentz, J.P. McGraw, Chad Nesbit, Lorraine New, Patricia Ouellette, Wendy M. Parr, Richard Shapack, Teresa Shafer Sullivan, Robert M. Taylor, Rob Tiplady, Elizabeth Woodruff

III. Introduction of Guests: All attendees, including guests, introduced themselves.

IV. Secretary's Report: The minutes of the February 11, 2006 meeting were approved.

V. Treasurer's Report: No report.

Chairperson's Report: Mike reiterated his invitation for all interested persons to participate in Council activities.

The Economics of Law Survey is just about complete. Three requests were sent out to attorneys and two requests to judges, producing over 500 responses. The completed survey will be published in the Journal.

Mike reported that the Administrative Order re: privacy policies, which was issued on February 10, 2006, effective March 1, 2006, resolved some, but not all, of the concerns raised by the Council. However, in its final form, the Order does not create additional undue burdens on the probate courts. Redaction is limited to certain circumstances. A full copy of the final Order is attached with these minutes.

Mike reported he recently heard a rumor about legislation that would require disputes regarding powers of attorney to be handled by the family division of the circuit court. He asked if anyone was familiar with this. Becky Bechler and Harold Schuitmaker had heard nothing about this.

Mike is our liaison to the Representative Assembly of the State Bar. He asked if there are any issues we want raised. George Gregory asked where the ethics issues stand vis-à-vis potential conflict when estate planning attorney represent multiple family members. Mike will contact Fred Rolf to see if Fred has heard anything more on this issue.

Mike reported that estate recovery bills were introduced recently by a Democrat from Ann Arbor. As more information becomes available, he will pass it along.

Mike also reported that he received an email from Katherine O'Connell at the State Bar about a meeting planned with the State Bar Attorney Discipline Board and the Attorney Grievance Commission to address the increasing number of lawyers who are practicing with diminished capacity. Katherine asked if our section had ever addressed this issue. This is an area of concern and we will cooperate with the Board and the Commission, but our section does not need to address it separately.

VI. Report of the Committee on Special Projects: Mark Harder reported that the committee looked at Sections 601 and 604 of the proposed Michigan Trust Code. Section 604 was referred back to committee.

Doug Chalgian gave a status report on the implementation of the recent Medicaid legislation. A copy of Doug's summary, entitled The Deficit Reduction Act of 2005 and Medicaid Eligibility for Long Term Care, is attached.

George Gregory gave an update on the problem of assessors uncapping real estate valuations when grantors transfer real property into trust.

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*: No report.
7. **Annual Meeting** – *Douglas A. Mielock, chair*: No report.

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

1. **Amicus Curiae** – *Mark Harder, chair*: Mark handed out a memorandum about the Van Connett case that he and Ellen prepared. A copy of the Memorandum is enclosed. Ellen gave a summary of the case along with a summary of the Section's proposed response. It was moved and supported that the Council approve these recommendations, and after a vote, the recommendations were approved.
2. **Continuing Education & Annual Probate Institute** – *Lauren M. Underwood, chair*: No report.
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*: No report.
6. **Electronic Communication** – *John Dresser, chair*: No report.

C. **Legislation and Lobbying**

1. **Legislation** – *Harold Schuitmaker, chair*: Harold reported that he received an email from Jim Gamble, who wants the Council to take a look at some proposed legislation, but Harold did not get the attachment Jim was trying to send. He will report on that request when he gets the attachment.

HB 5602, which eliminates the conflict between EPIC and the Adoption Code regarding inheritance rights and adopted children has passed the House and is in the Senate. Becky understands this will be taken up before June. A copy of this bill is attached.

Becky also reported that estate recovery probably won't be taken up until the lame duck session. Additionally, HB 5680, which provides you do not have to attend law school in order to sit for the Bar exam, probably won't go anywhere.

Mark Harder reported that Senator Van Regenmorter is retiring due to health issues. There was some general discussion about who might take his place in terms of his general support for our mission.

2. **Uniform Trust Code** – *Mark K. Harder, chair*: The Committee on Special Projects recommended that the proposed Michigan Trust Code section 601 be adopted. After a vote, it was approved.
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*: Tom and Ellen attended a State Bar meeting on the unauthorized practice of law. The following issues were discussed:
 - a. The State Bar continues to work on educating the public about will and trust kits. The Bar has support from the Department of Labor and Economic Growth, Office of Financial & Insurance Services, Attorney General. There was a general discussion about the problems of enforcement with this problem. The State Bar has limited resources and must choose its cases carefully.
 - b. There is now a pamphlet on the State Bar web site entitled “Hiring a Lawyer” as part of the Bar’s efforts toward educating the public.
 - c. The State Bar may provide some support in cases in which a person is trying to sue a trust kit practitioner for malpractice.
3. **Specialization and Certification** – *Richard A. Shapack, chair*: The committee plans to meet at lunch to discuss this process.
4. **Practice Management** – *Richard J. Siriani, chair*: Richard provided an article entitled “Title Insurance: Post-Policy Transfers

of Real Estate to a Trust”, which is attached. Rich also reported that his committee is looking at the Court Rules that came out in late 2005 to determine whether any technical amendments are needed. If so, the committee will draft proposed amendments and give them to Joan Von Handorf’s committee before bringing them to the full Council.

E. Administration of Justice

1. **Contested and Uncontested Probate Proceedings** – *Amy N. Morrissey, chair*: No committee report; however, Amy thanked the Council for its gift in recognition of her new baby daughter, Maria.
2. **Uniformity of Practice** – *Sebastian Grassi, Jr./Joan Von Handorf, co-chairs*: Joan reported that the committee is working on a survey with ICLE (copy enclosed). She has requested that court that have special forms provide them so they may be posted on a web site maintained by the Macomb County Bar Association (www.macombcountyprobatebar.org), and most courts have agreed, but she has not had good responses to her request that they also provide a list of any special procedures. Joan will add special procedures as she becomes aware of them. It was suggested that other local bar associations consider doing the same thing.

F. Practice Issues, Related Areas & Liaisons

1. **Charitable Giving/Exempt Organizations** – *Robin D. Ferriby, chair*: No report.
2. **Transfer Tax** – *George Gregory, chair*: George reported on a tax case in the District Court of North Dakota in which the estate of a decedent, Harry Baum, undervalued some stock on the estate tax return. The estate sold the stock and paid gains tax. However, in the meantime, the 706 was adjusted and additional tax was assessed on the undervaluation. In the meantime, the limitations period had run on the refund of the gains tax paid. The court did not permit any mitigation and the estate ended up paying both taxes.

George also reported that a Rev. Proc. Was issued last year to address state laws that give surviving spouses a right of election against all assets, including, theoretically, CRATs and CRUTS. There will be a grandfather period which will extend indefinitely while the IRS decides how to handle these cases.

A copy of the Tax Nuggets is enclosed.

3. **Guardianships and Conservatorships** – *Douglas A. Chalgian, chair*: No report.
4. **Business Law and Business Section Liaison** – *John Dresser*: John reported there is an effort underway to streamline the procedures in the Tax Tribunal. Additionally, there are broad changes under the Homeland Security Act in which federal prosecutors may demand business owners waive the attorney-client privilege in cases involving criminal action. The courts can take into account the owner's refusal to do so when imposing a sentence. This waiver would be a waiver of everything involving the attorney-client privilege, not just the criminal matter.
5. **Court Rules and Forms** – *Harold Schuitmaker/Joan Von Handorf, co-chairs*: Joan reported that the committee is working on material to give to the SCAO forms committee and will have it to the Council by the June meeting. Mike will send it to the SCAO forms committee over the summer so they know where we stand.
6. **Elder Law/Elder Law Section Liaison** – *Josh Ard*: Josh reported that estate recovery is on the horizon.
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*: Rich reported that the joint program last year was very successful and the Real Property Section would like to repeat it this year. Anyone interested in volunteering should contact Rich.
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*: Tess Sullivan reported that the committee is still working on legislation regarding asset protection in trusts and also on legislation regarding extending or eliminating the rule against perpetuities.

- X. Other Business: Judge Harter reported there seems to be a lot of confusion about how to handle wrongful death cases. We will do a Journal article on this issue.
- XI. Hot Topics: The Council continued the discussion of the Michigan Trust Code that was begun at the CSP. After discussion, the Council voted to recommend Section 604 and 602 back to committee for further discussion.
- XII. Adjournment

NEXT MEETING

**Saturday, June 22, 2006
University Club
East Lansing, Michigan**

**COMMITTEE ON SPECIAL PROJECTS MEETING AT 9:00 A.M.
COUNCIL MEETING AT 10:15 A.M.**