

MINUTES OF THE MEETING OF THE
COUNCIL OF THE PROBATE & ESTATE PLANNING SECTION

February 21, 2004, 10:15 a.m.
Lansing, Michigan

- I. The meeting was called to order by the Chair, Henry M. Grix, at 10:30 a.m.
- II. **Council Officers and Members Present:** Henry M. Grix, Hon Phillip E. Harter, Michael J. McClory, Douglas A. Mielock, Lauren M. Underwood, Daniel E. Cogan, Douglas A. Chalgian, John R. Dresser, Christopher L. Edgar, Mark K. Harder, George Gregory, Richard A. Shapack, George A. Cooney, Jr., Kenneth J. Seavoy, Ramon F. Rolf, Jr., and Marilyn A. Lankfer.
- III. **Others Present:** John H. Martin, Joan Von Handorf, Lynn Chard, Shaheen Imami, Michael J. Hughes, Ellen Sugrue Hyman, Elaine Cohen, Amy Morrissey, Cynthia Andrews, Sam Carpenter, Susan Allan, Michael Witzke, Robert M. Hartley, Robert M. Taylor, Shirley A. Kaigler, John Mabley, John E. Bos, Lisa Langton, and Tom Sweeney.
- IV. **Council Members Excused:** Sebastian V. Grassi, Jr., Hon. John R. Monaghan, Nancy L. Little.
- V. **Introduction of Guests:** All attendees, including guests, introduced themselves.
- VI. **Secretary's Report:** The minutes of the January 17, 2004 meeting were approved.
- VII. **Treasurer's Report:** Lauren Underwood distributed a financial report for the four months ending January 31, 2004 and reported that the Section is on track in terms of the budget.
- VIII. **Chairperson's Report:**
 - a. **Senate Bill 888 (Lien on Inheritance for Past Due Child Support).** Henry Grix reported that he has contacted the Family Law Section in regard to Senate Bill 888. The Family Law Section supports the underlying concept of the bill, but has concerns with the bill, as does our Council.
 - b. **Update to ICLE EPIC Publication.** Pursuant to the authority granted by the Council at the last meeting, Henry Grix has appointed a committee consisting of himself, Lauren Underwood, and Doug Mielock to negotiate the contract with ICLE on the new EPIC publication. The new publication will include expanded commentary and annotations to cases decided since EPIC was enacted. The copyright on the reporter's commentary is jointly owned by the Council and John Martin. Henry reported that last time this contract was negotiated, the royalties paid by ICLE were split 80/20 between John Martin and the Council. Henry noted that

the proposed split for the new contract was 90/10 between John Martin and the Council.

- c. **Michigan Notary Public Act.** Henry Grix distributed a handout prepared by Josh Ard, who could not be present, on the Michigan Notary Public Act. PA 238 of 2003 (HB 4938) becomes effective April 1, 2004.

IX. **Report of the Committee on Special Projects (CSP):**

- a. **Decoupling of Michigan Estate Tax.** George Cooney reported on the discussion at the CSP meeting on Governor Granholm's recent budget proposals, which include a proposal to "decouple" the Michigan Estate Tax. On the recommendation of CSP, this issue was referred to the Transfer Tax Committee to investigate the details of the Governor's proposal and to make recommendations. The discussion on the decoupling of the Michigan Estate Tax led to a renewed discussion on the use of a lobbyist for this and other matters. Henry Grix said he would investigate the cost of retaining a lobbyist on this matter for a designated period.
- b. **Conservatorships - Proposed Changes to Michigan Court Rules.** George Cooney reported on the extensive discussion of the proposed changes to the Michigan Court Rules in response to concerns raised in the Office of Auditor General's Report on Conservatorships. The proposed changes were created by a committee consisting of: Ev Zack, John Dresser, Mike McClory, Lynne Marine, Doug Chalgian, Joan Von Handorf, Harold Shuitmaker, Amy Morrissey, Judge John Monaghan, Judge Phil Harter, and Jean Mahjoory. By a vote of 15-12, CSP voted to table the proposed changes to the court rules, but to continue Chairperson Henry Grix's authority to release the proposed court rule changes as may be appropriate.

After further discussion on the proposed court rule changes at the Council meeting, John Bos moved that the proposed changes to the court rules be sent to the Michigan Supreme Court at this time. The motion was seconded by John Dresser. The motion failed by a vote of 7-10.

On a motion by George Cooney, which was seconded by George Gregory, the Council voted to table the proposed changes to the court rules, but reaffirmed Chairperson Henry Grix's power to send the proposed changes to the Michigan Supreme Court as he may determine in his discretion. The motion passed 13-2. Henry Grix thanked the members of the committee who prepared the proposed rule changes for their work.

X. **Standing Committee Reports**

A. Internal Governance

1. **Budget:** Lauren Underwood warned that we may see a decline in Section membership this year.
2. **Bylaws:** No report.
3. **Michael W. Irish Award:** No report.
4. **Strategic Planning:** Judge Harter solicited ideas on how to address the perception that the Council is a “closed group.” This issue was first raised at the strategic planning session in September 2003. The product of this discussion is contained in a report issued by Judge Harter that appears in the materials for the March 20, 2004 Council meeting.
5. **Nominations:** No report.
6. **Relations with State Bar:** Kim Cahill reported on recent Administrative Order No. 2004-01, which sets forth reporting requirements for Sections of the State Bar of Michigan that engage in “ideological activities.” An informational meeting is scheduled for Friday, March 5, 2004 at 10:00 a.m. at the State Bar’s offices to clarify answer questions regarding the order.
7. **Annual Meeting:** The Section’s annual meeting is scheduled for September 11, 2004 at the University Club in Lansing, Michigan. Henry Grix asked for volunteers to assist Judge Harter in planning the annual meeting. Chris Edgar, Mike Witzke, and Shaheen Imani will assist Judge Harter in the planning. There was some discussion on how to expand on the strategic planning work done at the previous annual meeting.

B. Education & Advocacy Services for Section Members

1. **Amicus Curiae:** Mark Harder reported that the Bank One case is now in the Michigan Court of Appeals.
2. **Continuing Education & Annual Probate Seminar:** Lynn Chard reported that the dinner for Council members and speakers will be held at the Denos Museum in Traverse City this year. In addition, this year, at both Grand Traverse and in Troy, there will be a lunch for attendees. Lynn asked for volunteers to sit at the tables and lead discussion. Lynn also solicited input in the Detroit area location for the 2005 Annual Probate Seminar. She noted the possibility of having the seminar at the Ford Motor Company Conference & Event Center in Dearborn, Michigan. However, because of the extra cost of a Saturday session at this site, the Detroit area seminar would have to be changed to a Thursday/Friday format, rather than its existing Friday/Saturday

format. Judge Harter suggested surveying attendees at this years Troy seminar to determine interest in moving the seminar in 2005.

3. **Section Journal:** Henry Grix reported on behalf of Nancy Little that the Section Journal is on schedule.
4. **State Bar Journal:** No report.
5. **Pamphlets:** No report.
6. **Electronic Communication:** Doug Mielock was asked to contact the State Bar to arrange to have the minutes of the Council meetings posted on the Section's web-site. John Dresser reported that ICLE's "Michigan Law Online" will be debuting sometime in March and will provide free primary online research of Michigan law to members of the State Bar of Michigan. John also noted that it appears that West Publishing may be abandoning the Form 706 software business.

C. Legislation and Lobbying:

1. **Revised Uniform Principal and Income Act (HB 5307):** John Martin reported that HB 5307 (Revised Uniform Principal and Income Act) was passed by the House on February 3, 2004 and has been referred to the Senate Committee on Judiciary. The bill currently contains an effective date of May 1, 2004, but this date could get pushed back if there is a delay in enactment. In regard to the recent regulations under IRC §643, John Martin said that he has discussed this with Jim Gamble and they both agreed that HB 5307 should be enacted first, before coming back and making any necessary changes that may be required by the IRS.
2. **EPIC Amendments (SB 1051):** John Martin reported that the bill containing the amendments to EPIC has not yet been introduced in the Michigan legislature, but when it is introduced, it will be introduced in the Senate and they will try to run both the RUIA bill and the EPIC amendments bill on the same day in the Senate Committee on Judiciary. [Secretary's Note: Following the meeting, SB 1051 was introduced on March 2, 2004.]
3. **Uniform Trust Code:** Mark Harder reported that he has set up an extranet to coordinate the work of the UTC committee. The UTC committee is currently working on Articles 1, 2, and 3. It was noted that the ACTEC listserve currently contains a great deal of discussion on the enactment of the UTC in Arizona and Colorado and controversy that has arisen as a result. Also, the National Conference of Commissioners on Uniform State Laws has published a formal rebuttal to negative comments made regarding aspects of the UTC.

D. Professionalism and Standards

1. **Ethics:** No report.
2. **Unauthorized Practice & Multidisciplinary Practice:** Fred Rolf reported that he would try to get someone from the State Bar of Michigan to attend an upcoming Council meeting to report on State Bar efforts in combating the unauthorized practice of law.
3. **Specialization and Certification:** Lynn Chard reported that the State Bar will be exploring the issue of specialization and certification of attorneys in an upcoming meeting. Lynn and Richard Shapack will attend.
4. **Practice Management:** No report.

E. Administration of Justice

1. **Contested and Uncontested Probate Proceedings:** No report.
2. **Uniformity of Practice:** Joan Von Handorf reported that 50 of the 78 survey forms sent out to the probate courts have been returned. She also reported that a conflict over filing procedures in the Macomb County Probate Court seems to have been resolved.

F. Practice Issues, Related Areas & Liaisons

1. **Charitable Giving/Exempt Organizations:** No report.
2. **Transfer Tax:** Tom Sweeney distributed a "Tax Nuggets" report.
3. **Administration of Justice, Probate Court Rules, Procedure, Forms and Standard Jury Instructions:** No report.
4. **Guardianships and Conservatorships:** No report.
5. **Business Law/Liaison to Business Law Section:** No report.
6. **Elder Law/Liaison to Elder Law Section:** No report.
7. **Family Law/Liaison to Family Law Section:** No report.
8. **Real Property Law/Liaison to Real Property Law Section:** No report.
9. **Tax/Tax Section Liaison:** Shirley Kaigler reported that the next meeting of the Tax Section's council is scheduled for March 16, 2004.

10. **Trust Institutions and Liaison with Michigan Bankers Association:** Dan Cogan reported that the MBA opposes the Council's proposed change to the commentary under Rule 1.7 of the Rules of Professional Conduct. The MBA's position is that an attorney who represents a bank as fiduciary as trustee of a trust should be prevented from opposing the bank in a matter concerning the bank's role as trustee of another trust.
11. **Liaison to Court Rules and Forms Committee:** No report.
12. **State Bar Liaison:** No report.
13. **Law School Liaison:** No report.

XI. Other Business: None.

XII. Hot Topics: None.

XIII. Adjournment: The meeting was adjourned at 12:12 p.m. The next meeting of the Council is scheduled for March 20, 2004 at 10:15 a.m. at the University Club, Lansing, Michigan.