

**MINUTES OF THE JOINT MEETING OF THE COUNCIL
OF THE PROBATE AND ESTATE PLANNING SECTION AND COMMITTEE ON
SPECIAL PROJECTS**

**Aparil 19, 2008, 2007 8:30 a.m.
University Club, East Lansing, Michigan**

I. The joint meeting of the Probate and Estate Planning Council and Committee on Special Projects was called to order at 8:30 a.m. by Chairperson, Lauren M. Underwood.

II. **A. Council Members Excused:** Richard J. Sirani, Robert P. Tiplady

B. Council Officers and Members Present:

Lauren M. Underwood	Nancy L. Little
Harold G. Schuitmaker	Douglas G. Chalgian
George W. Gregory	

C. Susan M. Allan	Shaheen I. Imami
W. Josh Ard	Marilyn A. Lankfer
Daniel E. Cogan	Amy N. Morrissey
John R. Dresser	Rebecca A. Schnelz
Robin D. Ferriby	James B. Steward
Hon. Kathryn A. George	Thomas F. Sweeney
Mark K. Harder	Marlaine C. Teahan
Ellen Sugrue Hyman	

Others Present: Constance L. Brigman, Samuel D. Carpenter, Rhonda M. Clark-Kreuer, Kevin Cotter, Christopher L. Edgar, Honorable Phillip E. Harter, J. David Kerr, Daniel P. Marsh, Douglas A. Mielock, Michael S. McClory, Jeanne Murphy, Honorable David M. Murkowski, Lorraine F. New, Patricia M. Ouellette, Valerie L. Rice, Carol A. Sewell, James P. Spica, Teresa S. Sullivan, Bob Taylor, Amy R. Tripp, Derek A. Walters

I. Legislation and Lobbying

1. **Legislation** - *Harold Schuitmaker and John R. Dresser, co-chairs:*

Michigan Trust Code - *Mark K. Harder, chair.*

Mark K. Harder began the meeting with a discussion of the Michigan Trust Code.

Mr. Harder first offered a status report indicating that the Committee had completed all of its work on EPIC conforming changes and that there were four remaining major topics for the Council's consideration which will be taken up at this meeting, and, as necessary, at the special May meeting scheduled for May 17, 2008. Those topics were (1) review Sections that have been previously reviewed, (2) address issues of capacity in the Michigan Trust Code, (3) discuss the role of Trust protector in the Michigan Trust Code, and, (4) attorney fees.

Section 112

Mark K. Harder moved to adopt Section 112 regarding the no contest clause. The proposal was to incorporate language comparable to the EPIC Section 2518 to trust proceeding establishing a probable cause exception. Motion was supported by Lauren M. Underwood and was passed. **(See Attachment 1)**

Section 812

Mr. Harder made a motion with support from Daniel E. Cogan to modify Section 812 which was previously approved to add provisions of EPIC Section 7412 within 812(3). That motion passed. **(See Attachment 1)**

EPIC Section 3915

Mr. Harder made a motion with support by Marilyn A. Lankfer to adopt conforming changes to EPIC Section 3915. Motion passed. **(See Attachment 1)**

EPIC Section 5407(c)(iii)

Mr. Harder made a motion to remove the word "trustee" from EPC Section 5407 (c)(iii). Motion was supported by Marilyn A. Lankfer. The motion passed on a narrow margin of eleven to nine. **(See Attachment 1)**

EPIC Section 8101

Mr. Harder made a motion to make conforming changes to EPIC Section 8101 relating to the implementation date. Motion was supported by Daniel E. Cogan. That motion passed. **(See Attachment 1)**

Section 802

Mr. Harder made a motion to modify Trust Code Section 802 to include the term "substantial" as a modification to the term

“conflict”. This motion was supported by Marilyn A. Lankfer. This motion led to discussion with respect to how that change would relate to Trust Code Section 802 (1) and EPIC Section 1212. The motion passed with the understanding that the issue of how the modified section interrelates with the other sections would return to the Committee for further discussion. **(See Attachment 1)**

EPIC Sections 3713 and 5421

Mr. Harder made a motion for modifications to EPIC Sections 3713 and 5421 in order to conform more consistently with the Trust Code Section 802. Motion was supported by Teresa S. Sullivan. Motion passed. **(See Attachment 1)**

EPIC Section 1214

Mark K. Harder made a motion for conforming changes to EPIC Section 1214. Motion was supported by Marilyn A. Lankfer, motion passed.

Section 1003

Mark K. Harder made a motion for modifying Trust Code Section 1003 in the manner proposed by the Committee. Motion was supported by Teresa S. Sullivan. Motion passed. **(See Attachment 1)**

Sections 601, 603, 808

Mr. Harder led a discussion of Sections 601, 603 and 808 of the Michigan Trust Code relating to the role of capacity and, specifically, to the adoption of a “testamentary capacity” standard for the creation of a trust. Support from Marilyn A. Lanker. The discussion on this topic was extensive. During the discussion a motion to drop Trust Code Section 601 completely was made by Shaheen I. Imami and supported by George W. Gregory. Motion failed. The original motion by Mr. Harder with support by Marilyn A. Lankfer to adopt a testamentary capacity standard for the creation of the trust was passed. **(See Attachment 2)**

Trust Protector Provisions

Mr. Harder then began discussion of trust protector provisions and the options that the Council would have in addressing the inclusion of this concept to the Trust Code. He offered a revised, proposed version that he had drafted for Section 808.

Due to the lateness of the hour the discussion was cut off in order for a full meeting of the Council to take place. **(See Attachment 3)**

IV. Adjournment – The Joint Meeting of the Probate and Estate Planning Council and Committee on Special Projects was adjourned at 12:00 p.m.

Respectfully submitted,

Douglas G. Chalgian