

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

**February 16, 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 approximately 8:30 a.m. by chair, Lauren M. Underwood and CSP chair Amy Morrissey

II. **A. Council Members Excused:**

B. Council Officers and Members Present:

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| Lauren M. Underwood | George W. Gregory |
| Douglas G. Chalgian | |

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| C. W. Josh Ard | Amy N. Morrissey |
| Daniel E. Cogan | Rebecca A. Schnelz |
| John R. Dresser | James B. Steward |
| Hon. Kathryn A. George | Thomas F. Sweeney |
| Mark K. Harder | Marlaine C. Teahan |
| Shaheen I. Imami | Robert P. Tiplady, II |
| Marilyn A. Lankfer | Joan C. Von Handorf |
| Douglas A. Mielock | |

Others Present:

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| Cynthia S. Andrews | Lorraine F. New |
| Becky Beckler | Kurt A. Olson |
| Constance L. Brigman | Patricia M. Ouellette |
| Michael D. Holmes | Valerie L. Rice |
| Stephen W. Jones | Christine M. Savage |
| Mark E. Kellogg | Pamela J. Sisson |
| Michele C. Marquardt | James P. Spica |
| Daniel P. Marsh | Teresa S. Sullivan |
| J. R. McGraw | Derek A. Williams |
| Melisa Mysliwec | Elizabeth K. Woodruff |

- III. **Introduction of Guests:** All attendees, including guests, introduced themselves.
- IV. **Secretary's Report:** No Report.
- V. **Treasurer's Report:** No Report
- VI. **Chairperson's Report:** No Report
- VII. **Report of the Committee on Special Projects:** *Richard J. Siriani and Amy N. Morrissey, Co-Chairs of the Committee on Special Projects:* No report.

VIII. **Standing Committee Reports**

A. **Internal Governance**

- 1. **Budget** – *George W. Gregory., chair.* No report.
- 2. **Bylaws** - *Marilyn K. Lankfer, chair.* No report.
- 3. **Michael Irish Award** - *Brian V. Howe, chair.* No report.
- 4. **Long-Range Planning** - *Lauren M. Underwood, chair.* No report.
- 5. **Nominations** - *Henry M. Grix, chair.* No report.
- 6. **Relations with the State Bar** - *John R. Dresser, chair.* No report.
- 7. **Annual Meeting** - *Lauren M. Underwood, chair.* No report.

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

- 1. **Amicus Curiae** - *Mark K. Harder, chair.* No report.
- 2. **Continuing Education & Annual Probate Institute** - *Nancy L. Little, chair.* No report.
- 3. **Section Journal** - *Nancy L. Little, chair.* No report.
- 4. **State Bar Journal** - *Sebastian V. Grassi, Jr., chair.* No report.
- 5. **Pamphlets** - *Ellen Sugrue Hyman, chair.* No report.
- 6. **Electronic Communication** - *John R. Dresser, chair.* No report

7. **Committee on Special Projects** – *Amy N. Morrissey/Richard J. Siriani, Co-Chairs:*

C. Legislation and Lobbying

1. **Legislation** - *Harold Schuitmaker and John R. Dresser, co-chairs:*
2. Amy N. Morrissey summarized the status of the legislation being proposed for repeal of the Rule Against Perpetuities. As Chair of the Rule Against Perpetuities Committee Ms. Morrissey indicated that the Committee is generally in support of the legislation being proposed by Attorney James P. Spica with Greenleaf Trust but there are some changes that the Committee would prefer to see. Handouts were provided with draft legislation and also case studies. See attachment.
3. **Michigan Trust Code** - *Mark K. Harder, chair.* At approximately 9:00 am the group began its work on the Michigan Trust Code with the discussion being led by Mark K. Harder.

A motion was made by Mark K. Harder with support by Marilyn A. Lankfer to adopt the Michigan Trust Code Committee recommendation that the definition of the word “jurisdiction” be approved as proposed by the Committee but be included in EPIC and not in the Trust Code. This motion was approved.

Mark K. Harder made a motion to adopt the Committee’s recommendation for a definition of the term “revocable”. This motion was supported by Lauren M. Underwood and approved.

Mark K. Harder made a motion to adopt the Michigan Trust Code Committee recommendation for the definition of the term “settlor”. This motion was supported by Marilyn A. Lankfer and approved.

Mark K. Harder made a motion to adopt the Michigan Trust Code Committee recommendation that the definition of the term “state” be left in EPIC where it is presently located and not be included in the Trust Code. This motion was supported by Marilyn A. Lankfer and was approved.

Mark K. Harder made a motion that the phrase “terms of the trust” not be included in the Michigan Trust Code. This motion was supported by Lauren M. Underwood and was approved.

Mark K. Harder made a motion that the term “trust instrument” be defined as recommended by the Michigan Trust Code Committee. This motion was supported by Lauren M. Underwood and approved.

Mark K. Harder made a motion to support the Michigan Trust Code Committee recommendation that the term “trustee” not be included in the trust code as it is already defined in EPIC. This motion was supported by Marilyn A. Lankfer and was approved.

Mark K. Harder made a motion that the term “organization” as it currently appears in Section 1106 of EPIC be modified as proposed by the Michigan Trust Code Committee. Teresa S. Sullivan supported this motion and it was approved.

Mark K. Harder made a motion that the term “proceeding” as it is currently defined in EPIC Section 1106 be modified in a manner proposed by the Michigan Trust Code Committee. This motion was supported by Lauren M. Underwood. This motion failed. The definition was referred back to the Committee for further discussion.

Section 1101

A discussion followed regarding the Michigan Trust Code Committee recommendations for Section 1101 as proposed by the Michigan Trust Code Committee. A motion was made by Douglas G. Chalgian with support by John R. Dresser to adopt the Committee’s recommendation. Lauren M. Underwood requested an amendment to the motion that the Council only approve parts 1 and 2 of Section 1101 as proposed and that Section 3 be returned to the Committee for further considerations. The amendment by Lauren M. Underwood was accepted and the motion passed to approve parts 1 and 2 of Section 1101 as recommended by the Committee and for Section 3 of Section 1101 to return to the Committee for further consideration.

Section 1102

Mark K. Harder made a recommendation to adopt Section 1102 in the manner proposed by the Committee. This motion was supported by Teresa S. Sullivan and was approved.

Section 1103

Mark K. Harder made a motion to approve the Michigan Trust Code Committee recommendation that Section 1103 not be included in the Michigan Trust Code. The motion was supported by Teresa S. Sullivan and was approved.

Section 1104

Mark K. Harder made a motion to adopt Section 1104 as recommended by the Trust Code Committee. This motion was supported by Daniel E. Cogan and was approved.

Section 1105

Mark K. Harder made a motion that Section 1105 not be included in the Michigan Trust Code for the reason that it is already in EPIC. George W. Gregory supported the motion and it was approved.

Section 1106

Mark K. Harder made a motion to adopt Section 1106 in the form proposed by the Michigan Trust Code Committee. This motion was supported by Marilyn A. Lankfer and was approved.

Section 801

The Council then discussed the inclusion or exclusion of the term “good faith” in Section 801 of the Michigan Trust Code, and, if included, whether that term should be defined. A motion was made by Teresa S. Sullivan with support by W. Josh Ard that the term be included but defined using the UCC definition. Following discussion the motion by Ms. Sullivan was withdrawn and a motion by George W. Gregory was made to address only the issue of its inclusion. This motion was passed. A motion was then made that the term should not be defined. That motion was made by Douglas G. Chalgian with support by Mark K. Harder. This motion passed. The resulting consensus was that the term “good faith” will be included in Section 801 but will not be defined in the Michigan Trust Code.

Sections 603 and 808

The Council then began discussion of Sections 603 and 808 relating to capacity of a settlor and the obligation of a trustee to follow instructions of a settlor with compromised capacity. Following extensive discussion no motion was made or passed and the discussion of the trust code was concluded for the day.

3. **Statute of Repose** - *John A. Scott*: 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** - *Shaheen I. Imami and Richard A. Shapack, co-chairs*: No report
4. **Practice Management** - *Richard J. Siriani, chair*: No report.

E. Administration of Justice

1. **Contested and Uncontested Probate Proceedings** – *Amy N. Morrissey, chair*: No report.
2. **Uniformity of Practice** - *Sebastian V. Grassi, Jr. and Joan Von Handorf, co-chairs*: No report.

F. Practice Issues, Related Areas & Liaisons

1. **Charitable Giving/Exempt Organizations** - *Robin D. Ferriby, chair*: No report
2. **Estate Gift Tax** - *George W. Gregory, chair*: No report.
3. **Real Property Tax Issues** - *George W. Gregory, chair*: No report
4. **Guardianships and Conservatorships** - *Douglas G. Chalgian, chair*: No report.
5. **Business Law and Business Section Liaison** - *John R. Dresser, chair*: No report
6. **Court Rules and Forms** - *Harold Schuitmaker and Joan Von Handorf, co-chairs*: No report.
7. **Elder Law/Elder Law Section Liaison** - *Josh Ard*: No report.

8. **Family Law/Family Law Section Liaison** - *Patricia M. Ouellette*: A presentation was made by Attorney Patricia M. Ouellette. Ms. Ouellette reported on conversations she had with the Family Law Section regarding legislation which would repeal dower in Michigan. She indicated that the Family Law Section not only opposes the repeal of dower but would seek to expand it to make it gender neutral. Their primary interest is in providing notice to spouses in a divorce setting when one spouse desires to secrete assets. The Council expressed its general support for the repeal of dower but willingness to continue to have conversations with the Family Law Section to see if there are ideas which the two sections can agree upon.
9. **Real Property Law/Real Property Section Liaison** - *Richard Shapack*: No report.
10. **Tax Section Liaison** – *Lorraine F. New* : No report.
11. **State Bar Liaison** - *Francine Cullari*: No report.
12. **Trust/Michigan Bankers Association Liaison** - *Daniel E. Cogan*: No report.
13. **Michigan Probate Judges** – No report.

IX. Other Business:

X. Hot Topics:

- XI. Adjournment** – The Joint Meeting of the Probate and Estate Planning Council and Committee on Special Projects was adjourned at 11:45 a.m.

Respectfully submitted,

Douglas G. Chalgian