

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

**November 1, 2008 9:15 a.m.
University Club, East Lansing, Michigan**

I. The meeting was called to order after a one hour meeting of the Committee on Special Projects, by Nancy L. Little at 10:15 a.m., at the Genoa Woods Conference Center, Brighton, Michigan.

II. A. Council Members Excused:

Hon. Kathryn A. George
Marlaine C. Teahan

B. Other Council Members Absent

Robin D Ferriby
Robert M. Taylor

C. Council Officers and Members Present:

Nancy L. Little
Harold Schuitmaker
Douglas A. Chalgian
George W. Gregory
Mark K. Harder

William J. "Josh" Ard
Ellen Sugrue Hyman
Marilyn A. Lankfer
Patricia M. Ouellette
James B. Steward
Robert P. Tiplady, II

Amy N. Morrissey
Rebecca A. Schnelz
Thomas F. Sweeney
Richard J. Siriani

J. David Kerr
Shaheen I. Imami
Hon. David M. Murkowski
Susan M. Allan

Ex-Officio Members of the Council

John E. Bos
Robert B. Joslyn
Michael J. McClory

D. Others Present:

Carol L. Sewell	Kathleen Goetsch
T. V. Anderton	Mark Pasquali
Jeanne Murphy	Derek A. Walters
Rhonda Clark	Rick Mills
Mark Kellogg	Amy Tripp
Daniel P. Marsh	Mary Hiniker
Kristin Arnett	Lorraine F. New
Dan Cogan	

- III. Introduction of Guests:** All attendees, including guests, introduced themselves.
- IV. Secretary's Report:** The minutes of the September 27, 2008 meeting were approved as corrected with the consent of all present upon a motion made by Harold Schuitmaker and seconded by Marilyn Lankfer.
- V. Treasurer's Report:** The attached Treasurer's report, prepared by Mark K. Harder, was circulated, discussed and approved. Mark reviewed every line item, compared it to the budget, and explained all variances in a brief fashion. Many comments were made including those of George Gregory that there might be as much as \$20,000 of estimated expenditures arising from the prior year not reflected on the report, but that having a projected \$72,901 balance made that not particularly important. Mark K. Harder also answered other questions.
- VI. Chairperson's Report:** Nancy Little had an extensive Chairperson's report and started off by apologizing for its length and said she would not do it again. To a large extent it covered information discussed from the State Bar Section Chair Orientation held on October 2, 2008 (a copy of which is attached). Nancy reviewed the membership of the Section and cross-memberships with other Sections of the State Bar. The largest was Elder Law Section. A surprising one to Nancy was Consumer Law Section. Nancy felt there were areas in which our Section could coordinate activities with these and other Sections.

At the Orientation the State Bar representatives indicated the Bar's number one focus this year was criminal process and constitutional safeguards.

Nancy was disappointed in the Bar's position with regard to unauthorized practice and the "trust mills". Nancy raised this concern on behalf of the Section on several occasions, but the responses left her with the impression that the State Bar did not want to aggressively address trust mills because (1) it would look like the Bar was only looking out for lawyers, not the public, (2) the Bar feels that educating the public, rather than sanctioning the offenders, is the most effective approach. Nancy felt our Section should focus on consumer protection activities as a possible way to address the dangers and pitfalls associated with unauthorized practice. In the course of a general discussion it was decided that the UPL section should look at what other states do to combat this problem. Additionally, the Section to Section Committee should contact the Consumer Law Section to determine what collaborative steps could be taken, including possible amendments to the Consumer Protection Act.

Other topics discussed included services the State Bar can provide our Section vis-à-vis publicity measures, updates for the website <http://www.michbar.org/probate/>, publications, and so forth.

The Orientation also addressed ICLE services, and at our Council meeting Mary Hiniker explained some of these in more detail, including the short webcasts they are in the process of adapting.

VII. Report of the Committee on Special Projects: *Amy Morrissey, co-chair*, reviewed actions and discussions taken at the immediately preceding meeting of the Committee at 9:00 a.m. She reported that the topics included the Michigan Trust Code; Attorney Fees; Uniform Real Property Transfer on Death Act; Real Estate Subjects including property tax uncapping, tenancy by the entirety in trusts, and ladybird deeds; powers of attorney; Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act; Rights of Protected Persons; and asset protection aspects of estate planning (tenancy by the entirety, insurance, IRC 529 plans, and ladybird deeds). A discussion followed the role of the contested proceedings committee was discussed. The committee was looking for volunteers to work on these projects, and although some emerged, more were needed.

VIII. Standing Committee Reports –

A. Internal Governance

1. **Budget** – *George W. Gregory, chair*, deferred to Mark K. Harder the new Treasurer. He reviewed the proposed budget line by line. An extensive discussion followed. The use of more e-blast distributions was discussed extensively with the eventual decision to not abolish hard copies of the *Journal* at this time, but to continue to accelerate the substitution among

younger members. Older members (those over 50 primarily) objected to the use of the internet and have expressed this to Nancy in no uncertain terms. A budget increase was discussed in general terms, but no specific motion was made. Mark K. Harder accepted a friendly amendment by John Bos regarding the costs of monthly meetings. George Gregory expressed his opinion that the excess of receipts over expenditures incurred in the coming year might be as low as \$1,000 or as much as \$12,000 as opposed to the budgeted \$6,850; and that as long as it was positive and not outrageously so everyone should be satisfied. Tom Sweeney moved and Rick Siriani seconded the motion to accept the budget as amended. A copy is attached with the amendment as a pen and ink change.

2. **Bylaws** – *Marilyn Lankfer, chair*, no report.
3. **Michael Irish Award** – Nancy Little explained the background of and criteria for the award. She reported that it had been awarded to Susan S. Westerman at the Council's dinner on October 31, 2008.
4. **Long-Range Planning** – *Douglas G. Chalgian and Lauren M. Underwood, co-chairs*: No report.
5. **Nominations** – *Michael J. McClory, chair*: No report.
6. **Relations with the State Bar** – *Thomas F. Sweeney, chair*: The State Bar has asked us to provide examples of attorneys doing good for the community to give the public a better image of lawyers. Tom favors publicizing acts attorneys do, as attorneys, to be helpful to the public at large. Marilyn Lankfer mentioned charitable gifts as a result of attorney planning and assistance in facilitating. Another topic was providing lawyers who could be a resource to legislators. George Gregory suggested our own legislation committee.
7. **Annual Meeting** – *Harold Schuitmaker, chair*: No report.

B. Education & Advocacy Services for Section Members

1. **Amicus Curiae** – *Ellen Sugrue-Hyman, chair*: No report.
2. **Continuing Education & Annual Probate Institute** – *Douglas G. Chalgian, chair*: Doug reported that Greenleaf would be sponsoring the speakers dinner again this year.

3. **Section Journal** - *Nancy L. Little, chair*. Nancy Little reported that the next issue will not come out until the end of the year.
4. **State Bar Journal** – *Amy M. Morrissey, chair*. No report.
5. **Pamphlets** - *Ellen Sugrue Hyman, chair*. No report.
6. **Electronic Communication** – *William “Josh” Ard, chair*. No report.

C. Legislation and Lobbying

1. **Legislation** - *Harold Schuitmaker and John R. Dresser, co-chairs*: No report.
2. **Power of Attorney** – *Daniel P. Marsh, chair*. It is believed that HB 4180 is dead. We opposed it. After an extensive discussion, Nancy Little directed that the committee should review our existing statute for potential problems.
3. **Michigan Trust Code** - *Mark K. Harder, chair*. Mark explained that he had just given a detailed update at the meeting of the Committee of Special Projects to most of those now present. His abbreviated report was that he had received the blue back from the Legislative Service Bureau. The committee was awaiting comments from the Ad Hoc Committee on the Trust Code of the Michigan Probate Judges Association which might come as early as Thanksgiving, but more likely would be the Michigan Probate Judges Association in December. Final action from the Michigan Bankers Association was also expected in December. Senator Wayne Kuipers would sponsor the legislation and something would be introduced in the lame duck session to see if there were interested parties who had not been consulted.

D. Ethics, Professionalism and Standards

1. **Ethics** – *J. David Kerr, chair*. David invited questions and issues. Nancy Little indicated that this was a good area for articles in the *Journal*.
2. **Unauthorized Practice & Multidisciplinary Practice** – *Bob Taylor, chair*. No report.

3. **Specialization and Certification** – James B. Steward, *chair*. The committee was working on court rules and is looking for volunteers.
4. **Practice Management** – *Patricia M. Ouellette, chair*. No report.

E. Administration of Justice

1. **Contested and Uncontested Probate Proceedings** - *Shaheen I. Imami and Douglas G. Chalgian, co-chairs*. Working on a long range plan as litigation is expanding.
2. **Uniformity of Practice** – *Derek A. Walters, Chair*. Derek had been in contact with his predecessor who indicated that she learned about a lack of uniformity from a number of sources, but the most useful was the Probate Registers. Derek solicited sources of inconsistency from members. He plans to work with Marlaine Teahan and the forms committee.

F. Practice Issues, Related Areas & Liaisons

1. **Charitable Giving/Exempt Organizations** - *Robin D. Ferriby, chair*. No report.
2. **Transfer Tax** –*Thomas F. Sweeney, chair*. Lorraine New reported her views on the future of the estate tax exemption becoming \$3,500,000 on a permanent basis. In response to inquiries on a variety of related topics she speculated that the step up in basis would continue and she refused to speculate on other topics. She reported that changes in for 2009 in the gift tax annual exclusion (\$13,000 up from \$12,000); annual exclusion gift amount for non-citizen spouse (\$133,000 up from \$128,000); IRC 6166 portion of deferred estate eligible for 2% interest rate (\$ 1,330,000 up from \$1,280,000). See attached report.
3. **Guardianships and Conservatorships** – *Constance Brigman, chair*. No report.
4. **Business Law and Business Section Liaison** - *John R. Dresser, chair*. No report.
5. **Court Rules and Forms** – *Marlaine Teahan, chair*. No report.

6. **Elder Law/Elder Law Section Liaison** – *Amy Tripp*: HB 4563 which restricts sales of annuities to elders was endorsed. The Elder Law Section thought it was weak, but better than no change at all, and so endorsed it with comments and suggestions.
7. **Family Law/Family Law Section Liaison** - *Patricia M. Ouellette*: No report.
8. **Real Property Law/Real Property Section Liaison** – *Daniel P, Marsh*. No report.
9. **Tax Section Liaison** – *Lorraine F. New, Chair*. No report.
10. **State Bar Liaison** – *Richard Siriani*: No report
11. **Trust/Michigan Bankers Association Liaison** – *Susan Allan*: No report.
12. **Michigan Probate Judges** - *Hon. Kathryn A. George, chair*. No report.

IX. Other Business:

No one brought up any other business at the appropriate time.

X. Hot Topics:

No one brought up any hot topics at the appropriate time.

XI. Adjournment - the meeting was adjourned at 11:45 am.

Respectfully submitted,

George W. Gregory

STATE BAR SECTION CHAIR ORIENTATION

October 2, 2008

37,588 active members (32,205 Michigan residents; 5,353 out of state)

- Probate and Estate Planning: largest section. 5,192 (4,873 Michigan residents and 319 non-residents)
- Next largest sections: Business Law (3,452) and Real Property (3,351)
- Areas of overlap (members of other sections): Elder Law (1,875) Law Practice Management (1,360), Consumer Law (1,287), Real Property Law (1,026)

State Bar's #1 priority: looking at how criminal defense systems functions vis-à-vis constitutional standards; judicial discretion in sentencing. Other areas of high activity: family law, small claims court jurisdictional amount.

Six Things to Guarantee Success:

1. Review and follow by-laws
2. Have contracts reviewed by Bar
3. Use SBM design standards for our stuff (we may use their design services for our pamphlets)
4. Keep the Bar informed about activities
 - a. Be sure to post minutes
5. Don't be cheap
6. Give SBM two weeks, not two minutes

The SBM will:

- Do press releases for us (two weeks lead time)
 - o Include photos when possible
- Consult on media advice
- Refer reporters to Section officers
- Help with publicity for events
- Will provide a media advisor to talk to Section

- Q: do we need a media/pr committee?
- Contact persons: Naseem Stecker (517) 367-6428 or Michael Eidelbes (517) 367-6429
- Idea: team with Consumer Section to work on unauthorized practice of law publicity/presentations. Representative Assembly is studying Unauthorized Practice of Law, considering public relations seminars, court rules, statutes, bring UPL claims to the SBM UPL Committee. State Bar's position on UPL: "Education of public works; prosecution does not". Contact person: Dawn Goodrum-Garland (517) 346-6333
- Other groups we might partner with: Business Law, Elder Law, Family Law, Intellectual Property Law, Real Property.
- Section Briefs: 75 word limit, published in Michigan Bar Journal, due on the 5th of each month. Significant developments in the law, noteworthy events or achievements. This will provide monthly attention to our Section. Contact person: Linda Novak (517) 367-6422.

Print and electronic publications:

- In addition to listserv and eblasts, the SBM will assist us in developing and sending electronic surveys to our membership. Contact Anne Vrooman (517) 346-6410
 - Good way to determine direction, revisit strategic plan
 - Need 2-5 days lead time
- In-house typesetting/design/print services. Contact person: Susan Oudsema (517) 367-6423
- Some Sections are supplementing newsletters with monthly electronic updates (2 week lead time).

We can list our monthly meetings on the State Bar's web site calendar. I have sent this information to Sandi Barger to update.

Media and PR:

- President is primary spokesperson for State Bar
- Section may comment if the Bar has not taken a position

- If the Section does not take a position, experts from within the Section may comment as individuals. Warning: do not attribute statement to the State Bar or Section if representing a personal point of view.

Public Policy Resource Center (on SBM web page)

- Can search to determine SBM position on legislation
- Make sure SBM has our position on various legislation; legislators do access this
- We must report any public policy position we take within 10 days; this can be done on-line
 - o Must be done before any advocacy
- We must file notice under Administrative Order 2004-1 of any amicus brief

Finance: SBM will help with projection of financials using dues projected for 2009-2010

~~Our web site says: The section in cooperation with Wayne State University is preparing a CD-rom of probate judges decisions. This is expected to be available by the middle of May and will have a sale price of around \$25-30. You may call the Wayne State Library for information about the CD-rom.~~

We are entitled to up to three electronic lists per month for free

ICLE services:

- Develop web casts, such as 10 Tips in 10 Minutes and other on-line services for Section members
- Commonly used: co-sponsor seminars, institutes, develop content of newsletter, develop new book titles

**Probate and Estate Planning Section
2008-09 Annual Budget**

	Budget 2007-08	Actual 2007-08	Proposed 2008-09
Receipts			
Membership Dues	\$ 123,000	\$ 125,260	\$ 120,000
Publishing Agreements	\$ -	\$ 2,500	
Other Receipts - One Time	\$ 15,000	\$ 15,000	\$ -
Total Receipts	\$ 138,000	\$ 142,760	\$ 120,000
Journal	\$ 45,600	\$ 57,424	\$ 45,000
Chairperson's Dinner	\$ 6,000	\$ 100	\$ 6,000
Speakers Dinner	\$ 6,000	\$ -	\$ -
Travel	\$ 10,000	\$ 12,140	\$ 13,500
Lobbying	\$ 24,000	\$ 30,000	\$ 24,000
Meetings	\$ 14,000	\$ 9,496	\$ 8,000 9,000
Printing	\$ 4,000	\$ 2,353	\$ 2,400
Strategic Planning	\$ -	\$ -	\$ -
Publishing Agreements	\$ -	\$ 4,159	\$ -
Support for Annual Institute	\$ 5,000	\$ 935	\$ 5,000
Amicus Briefs	\$ 5,000	\$ -	\$ 5,000
Listserv	\$ 1,000	\$ 840	\$ 850
Postage	\$ 3,000	\$ 203	\$ 900
Telephone (conference calls)	\$ 1,000	\$ 146	\$ 500
Other	\$ 1,000	\$ 653	\$ 1,000
Total	\$ 125,600	\$ 118,448	\$ 112,150
Net Funds Remaining	\$ 12,400	\$ 24,312	\$ 7,850 6,850

AS amended

Tax Nugget November 2008

The Future of Estate Tax

Despite political rhetoric, there is no such thing as tax reduction, there is only tax shifting.

Since 1919, the US has had an estate tax. What are the chances it will go away? In 2000 the exemption amount was \$675,000 and the top rate was 55%. In 2001, 51,700 taxable estate tax returns were filed. From a 2-7-2007 report by the Congressional Research Service we learn that slightly more than 1% of the estates of adults who died in 2005 incurred estate tax liability. That is 18,431 estates. Only 0.07 percent included farm assets and a mere 0.46 percent included assets typically handled by businesses. Businesses comprised only 10.8 percent of the total value of taxable estates on which federal estate tax returns were filed in 2005. Farms comprised only 2.3%, The exemption amount in 2005 was 1.5 million; in 2006 the exemption rose to 2 million. Then 22,800 taxable returns were filed.

In 2009, the estate tax exemption amount becomes \$3,500,000 with 2010 a year of repeal of the estate tax unless Congress makes a change. I predict that most likely the 2009 rate will be extended or adopted and that the estate tax will continue. After all, who will pay for the federal debt that doubled over the Bush administration, the additional bailout amount, and the interest on it all?

John McCain has indicated that he favors a 5 million dollar exemption and a 15% rate and Barack Obama a 3.5 million dollar exemption and a 45% rate.

WHAT WE KNOW FOR SURE

What we know for sure is that the gift tax annual exclusion amount becomes \$13,000 for present interest gifts per donee (from \$12,000), the annual exclusion gift amount for non-citizen spouses rises to \$133,000 from \$128,000, and for Code section 6166 elections, the portion of a deferred estate eligible for 2% interest rate goes up to \$1,330,000 from \$1,280,000.

Lorraine New
Lorraine F. New P.L.L.C.
401 S. Old Woodward Suite 456
Birmingham, MI 48009

REIMBURSEMENT POLICIES/PROCEDURES

GENERAL POLICIES

1. Requests for reimbursement of individual expenses should be submitted as soon as possible following the event and in no event later than two weeks following the close of the fiscal year in which the expense is incurred so that the books for that year can be closed and audited.
2. All out of pocket expenses must be itemized.
3. Detailed receipts are recommended for all expenses but required for expenses over \$25.
4. Meal receipts for more than one person must indicate names of all those in attendance unless the function is a section council meeting where the minutes of that meeting indicate the names of those present. Seminar meal functions should indicate the number guaranteed and those in attendance, if different.
5. Spouse expenses are generally not reimbursable.
6. Mileage is reimbursed at the current IRS approved rate for business mileage. Reimbursement of mileage or travel expenses is limited to actual distance traveled; not distance from domicile to the meeting site.
7. Receipts for lodging expenses must be supported by a copy of the itemized bill showing the per night charge, meal expenses and all other charges, not simply a credit card receipt, for the total paid.
8. Airline tickets should be purchased as far in advance as possible to take advantage of any cost saving plans available.
 - A. Tickets should be at the best rate available for as direct a path as possible.
 - B. First class tickets will not be reimbursed in full but will only be reimbursed up to the amount of the best or average coach class ticket available for that trip.
 - C. Increased costs incurred due to side trips for the private benefit of the individual will be deducted.
 - D. A copy of the ticket receipt showing the itinerary must be attached to the reimbursement request.
9. Reimbursement for car, bus or train will be limited to the maximum reimbursable air fare if airline service to the location is available.
10. Outside speakers should be advised in advance of the need for receipts and the above requirements.

11. Bills for copying done by a firm should include the numbers of copies made, the cost per page and general purpose (committee or section meeting notice, seminar materials, etc.).
12. Bills for reimbursement of phone expenses should be supported by copies of the actual phone bills. If that is not possible, the party called and the purpose of the call should be provided.
13. The State Bar of Michigan is Sales tax exempt. Suppliers of goods and services should be advised that the State Bar of Michigan is the purchaser and that tax should not be charged.
14. Registration fees and refund checks should be made payable to the State Bar of Michigan and forwarded directly to the State Bar for depositing. Checks and money orders should not be deposited to a firm account and thereafter submitted by firm check to the State Bar. Cash tendered must be deposited and a check for the full amount sent to the State Bar of Michigan.
15. Reimbursement will in all instances be limited to reasonable and necessary expenses.

SPECIFIC POLICIES—SECTIONS

1. Sections may not exceed their fund balance in any year without express authorization of the Board of Commissioners.
2. Individuals seeking reimbursement for expenditures of funds must have their request approved by the chairperson or treasurer. Chairpersons must have their expenses approved by the treasurer and vice versa.
3. Checks or money orders tendered for payment must be forwarded to the SBM and made payable to the SBM. They should not be deposited to a firm account and then paid over to the SBM. Cash tendered must be deposited and a check for the full amount forwarded to the SBM.
4. Requests for reimbursement of expenses which require council approval must be accompanied by a copy of the minutes of the meeting showing approval granted.