

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

NOTICE OF MEETING

Saturday, November 12, 2005

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 **Saturday, November 12, 2005** 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.

Nancy L. Little
Secretary

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

**October 22, 2005 10:15 a.m.
Ann Arbor, Michigan**

- I.** The meeting was called to order by the chair, Michael J. McClory, at 10:15am.
- II. A. Council Members Excused:** Shaheen I. Imami (“Dad”), Lauren M. Underwood
- 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 | |
| Daniel E. Cogan | | |
| George A. Cooney, Jr. | Lisa Langton | |
| John R. Dresser | Marilyn A. Lankfer | |
| Christopher L. Edgar | Amy N. Morrissey | |
| Robin D. Ferriby | Kenneth J. Seavoy | |
| Sebastian V. Grassi, Jr. | Richard J. Siriani | |
| George W. Gregory | Thomas F. Sweeney | |
| Mark K. Harder | Joan C. Von Handorf | |
- C. Others Present:** Rebecca Bechler, Kim Cahill, Lynn Chard, Henry Grix, Mary Hiniker, Shirley Kaigler, Lorraine New, Patricia Ouellette, Teresa Shafer Sullivan, Rob Tiplady, Bradley R. Weeks, Elizabeth K. Woodruff
- III. Introduction of Guests:** All attendees, including guests, introduced themselves.
- IV. Secretary’s Report:** The minutes of the September 23, 2005 meeting were approved.
- V. Treasurer’s Report:** Harold Schuitmaker passed out a memorandum (attached)
- VI. Chairperson’s Report:** Mike McClory has completed committee assignments and thanked all committee members for agreeing to serve. Mike recommended sending a gift from the Hearts and Flowers Fund to Shaheen and Alison Imami, whose first child, Keegan, was born a few days ago; George Gregory moved and Tom Sweeney supported making such a gift and this motion was approved by the Council. Mike also recommended renewing the \$200 annual stipend that is paid to each Council officer. Sebastian Grassi

so moved, and Marilyn Lankfer supported the motion, which was passed by the membership. At Henry Grix's suggestion, this motion was amended to include a \$200 stipend to the Journal editor, the chairs of the Committee on Special Projects, and the chair of the Legislation Committee.

Mike handed out a proposed administrative order from the Supreme Court regarding privacy policies for access to court records. Paragraph 4 on page 3 of this proposed administrative order requires redaction of social security numbers whenever a file is requested by the public, which would unduly burden court staff and drastically degrade the ability of probate courts to service attorneys, the public, and process cases. Paragraph 2 (under the heading "Social Security Numbers and Nonpublic Records on page 2) contains contempt provisions for any person who files a document including another person's social security number, except where required by statute, court rule, court order, or for certain purposes related to collection activity. Council members commented on how the proposed administrative order might impact e-filing, microfilm court records, court staffing, and could subject persons to contempt proceedings if exhibits inadvertently contain a social security number. Mike requested that the council authorize him to write a letter to the Supreme Court setting forth Council concerns about paragraphs 2 and 4 (on pages 2 and 3), and requesting the Supreme Court to consider adding a fee for a voluntary redaction request. Doug Mielock so moved, supported by Rich Siriani, and the motion was passed by the membership.

VII. Report of the Committee on Special Projects: George Cooney reported that the Committee on Special Projects reviewed the Uniform Trust Code Committee's report on the Article 3 sections (attached). The CSP's recommendation is that the Council adopt sections 301, 304, and 305, as proposed by the UTC Committee, and return section 302 and 303 to the UTC Committee for further study. George Cooney so moved, and Marilyn Lankfer supported, and the Council voted to adopt this recommendation.

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:* Committee member Henry Grix moved that Lisa Langton be appointed to fill Harold Schuitmaker's term, Dan Cogan supported, and the Council voted to appoint Lisa to fill the remainder of Harold's term.

6. **Relations with the State Bar** – *John Dresser, chair*: Mike McClory thanked Kim Cahill for attending our meetings. Kim reported that the President of the State Bar has not yet made all liaison assignments yet. Susan McMann is our initial point person at the Bar, but we may also contact Kim. Kim reported that Chief Justice Taylor has indicated some receptivity to a pilot project on specialization and certification. She recommended that the Council carefully consider all details, especially the testing component, to ensure there is independent verification that the testing process is relevant. She suggested the Council do the following: (1) discuss specialization and certification further to determine whether we wish to proceed and (2) sketch out a proposal, including research on testing components.

George Gregory mentioned that he spent some time this past summer looking at other states that have adopted specialization and certification programs. He reported that the states he surveyed indicated their programs were self-sustaining, based on fees for application and periodic review. However, we should consider the source of funding the initial start-up costs. Florida spent about \$30,000 to start their program 10-12 years ago. Other issues that some states consider as part of the requirements: percentage of time practicing in the area of law in which the person is to be certified, length of time in practice, whether malpractice insurance is required, peer review issues, and so forth. We will discuss this issue more at next month's meeting.

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

B. Education & Advocacy Services for Section Members

1. **Amicus Curiae** – *Mark Harder, chair*: Mark reported that the *Sprenkle-Hill* case may be headed for the Supreme Court. He also reported that the Council has been asked by the Smith Haughey firm to file an amicus curiae brief in a matter involving the disclaimer of an annuity which was given in a wrongful-death case. After discussing the case, the Council decided without formal motion to re-decline at this time.

2. **Continuing Education & Annual Probate Institute** – *Lauren M. Underwood, chair*: In Lauren's absence, Lynn Chard reported that the dates have been set for next year's annual seminar. The Traverse City sessions will be held May 18-20 and the Troy sessions will be held June 9-10. Lauren has a complete draft of the seminar schedule.

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*: Ken reported that the committee is working on updating its pamphlets and asked whether the membership thought it would be worthwhile to provide this information on Power Point for Section members. The group consensus was that this was a great idea. Ken will investigate whether access to the Power Point presentations can be limited to Section members.

6. **Electronic Communication** – *John Dresser, chair*: No report

C. **Legislation and Lobbying**

1. **Legislation** – *Harold Schuitmaker, chair*: Harold reported that the sellers' disclosure statement for real estate transactions will be amended, effective April 1, 2006. He anticipates additional amendments to EPIC will be finalized shortly and may be effective at the end of 2005.

2. **Uniform Trust Code** – *Mark K. Harder, chair*: Mark reported that the committee continues to work hard on various provisions.

3. **Statute of Repose** – *John A. Scott, chair*: Becky Bechler reported a lack of enthusiasm among legislators and will continue to try to find a sponsor to introduce this issue.

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** – *Richard A. Shapack, chair*: No report beyond the earlier discussion involving Kim Cahill.

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 Grassi, Jr./Joan Von Handorf, co-chairs*: Joan reported that the court rules proposed by Jean Mahjoory and the Uniformity of Practice Committee were published for comment this past summer. Joan went to the hearing but did not have a sense that the Justices were too enthused about the proposed rules. There has been no further communication regarding the proposed rules since that time.

F. **Practice Issues, Related Areas & Liaisons**

1. **Charitable Giving/Exempt Organizations** – *Robin D. Ferriby, chair*: Robin reported that he will be publishing the economic survey shortly. He also gave a short report on the Hurricane Katrina Relief Act.
2. **Transfer Tax** – *George Gregory, chair*: No report.
3. **Guardianships and Conservatorships** – *Douglas A. Chalgian, chair*: No report.
4. **Business Law/Business Section Liaison** – *John Dresser, chair*: No report.
5. **Court Rules and Forms** – *Harold Schuitmaker/Joan Von Handorf, co-chairs*: Lisa Langton reported that Oakland County has developed a new form for notifying the Friend of the Court regarding estates. The form will be on Oakland County's Friend of the Court and Probate Court website in a few weeks. Additionally, Lisa will send a copy to Nancy Little for inclusion in the Journal as a practice aid.
6. **Elder Law/Elder Law Section Liaison** – *Josh Ard, chair*: A number of Medicaid estate recovery bills have recently been introduced.
7. **Family Law/Family Law Section Liaison** – *Pat Ouellette, chair*: No report.
8. **Real Property Law/Real Property Section Liaison** – *Richard Shapack, chair*: No report. However, George Gregory reported that he is seeing more uncapping of assessments on transfers to and from trusts and LLCs, and retroactively in probate estates. Harold Schuitmaker also has seen efforts to impose uncapping retroactive to the date of death in estate cases.
9. **State Bar Liaison** – *Kim Cahill*: No report beyond the earlier comments.
10. **Tax Section Liaison** – *Shirley Kaigler*: No report
11. **Trust Institutions and Michigan Bankers Association Liaison** – *Daniel E. Cogan*: Dan reported that the MBA is looking at the possibility of seeking an extended term for the rule against perpetuities because some banks are losing revenue for trusts that leave the state of Michigan for states with a more favorable perpetuities period.

X. Other Business

XI. Hot Topics

Lisa Langton reported that there is discussion of removing one judicial seat in both Wayne County Probate Court and the Oakland County Probate Court. Any such change will require legislative approval.

Lorraine New reported that her office of the IRS is now supervising all estate tax returns for Michigan.

Robin Ferriby thanked the group for remembering him and his family when they lost their home in a fire earlier this year.

XII. Adjournment

Respectfully submitted,
Nancy L. Little, Secretary

NEXT MEETING

**Saturday, November 12, 2005
University Club
East Lansing, Michigan**

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