

ELDRS Section Meeting  
April 6, 2019  
State Bar of Michigan Office, 306 Townsend, Lansing, MI 48933

**Attendance:** In person - Kelly Quadorkus\*, Christine Caswell\*, Robert Mannor\*, Susan Chalgian\*, Ray Harris\*, Nick Ryan\*, Caroline Dellenbusch\*, Tracey Rowens\*, Maria Messina Wiersma\*, Todd Tennis, Erin Mortenson, John Roy Castillo, Laura Kubit, Beth Swagman; by phone - Christopher Smith\*, Theresa Rich\*, Howard Collens\*, Angela Hentkowski\*, Jackie Rygiel-Sprague\*, Terri Winegarden\*, Sanford Mall\*, Liz Vincent\*, Harley Manela, Lisa Anderson, Beth Swagman, Jim Steward, Erma Thomas, Kimberly Parks, Bradley Vauter, David Sprague, David Kerr, Don Rosenberg, Erma Thomas, Kevin Gilhooi, Paul Sturjel

\*Denotes voting member

Kelly Quardokus called the meeting to order at 10:07 a.m.

Bob Mannor made a motion and Susan Chalgian seconded to approve the agenda as written. Motion passed.

Chris Smith reported on the Elder Abuse Task Force created by the attorney general. Chris went to the March 25 press conference and believes the group is going to pick up where the task force from 2009 left off. Chris said that guardianship reform is one of the main reasons for its creation. The first public meeting is scheduled for June, but there have already been three meetings scheduled in April. The Section will be part of legislative committee and the task force as a whole.

Chris Smith thanked everyone who contributed to the litigation fund and thanked Bob Mannor for his work on this. The Section raised almost \$1,500 at spring conference alone. Donations can be made to [https://www.naela.org/MINAELA/Fundraising/Gift\\_Detail.aspx?WebsiteKey=170d2353-d2c9-4cab-8c93-622eb28967b0](https://www.naela.org/MINAELA/Fundraising/Gift_Detail.aspx?WebsiteKey=170d2353-d2c9-4cab-8c93-622eb28967b0). Chris also reported biggest item on the legislative agenda was working on the Medicaid waiver program. Because Michigan is a medically necessary state, as opposed to an income-based state, we can't just change the spenddown. Changing to an income-based state would affect everyone in nursing homes, so we are looking for alternatives. We are reaching out to attorneys from other states to come up with various solutions.

Nick Ryan made a motion and Caroline Dellenbusch seconded to approve the minutes with a correction. Motion approved.

**Treasurer's Report** – Bob Mannor presented the February financial report from the Bar. He noted the drop in membership but apparently all sections have seen a drop in membership. The Section will see if it can work with the ICLE Elder Law Institute to see how many attendees of its fall conference are not members of the Section. Bob will have the final Section budget in May.

**Fall Conference Committee** – Angela Hentkowski reported that the fall conference schedule and registration should be up in May. She has signed a contract for Bay City in 2020. Maria Messina Wiersma will send topic suggestions to Angela from the Spring Conference. Angela and Bob Mannor reported that

ICLE asked if ELDRS wanted to co-sponsor a three-hour VA recertification program on Nov. 7 at no cost to the Section. There will be a \$30 discount for ELDRS members who attend. There were no objections.

**Spring Conference** – Harley Manela reported that attendance was down 10-12 people from what it usually has with a total of 87 attendees. Harley also reported that there were five people from YLS, three patrons at \$150, and two snack sponsors, Bob Mannor and Howard Collens. Maria Messina Wiersma will go to the ICLE Elder Law Institute in the fall to get the attendee list, so the Section can notify them about the Spring Conference. Harley is going to get right of refusal in the next week for a 2020 date.

**Membership and Education Committee** – Maria Messina Wiersma and Tracey Rowens reported that Erma Thomas did the last Webinar and that Rosemary Buhl will do the next one on April 15 at noon. They also reported that the five new lawyers at the spring conference were given their own lunch table with ambassadors from the section. The next task is establishing a mentor/networking program but not a formal mentor program. Maria and Tracey are looking to set up events where council members and new lawyers can come together.

**Mental Health Subcommittee** – Chris Smith included a draft letter in the agenda that he and Christine Caswell had worked on regarding questions on the Bar application form regarding mental health. Christine stated that she would like to change the wording to show that mental health issues are physiological in nature and that if we approve the suggested language on asking about certain behaviors, rather than mental disabilities, that gambling should be added to that list.

**Legislative Committee** – Todd Tennis reported that the legislature is coming back this week, but that they will be focusing on the budget. About \$8 million was cut from the home and community-based waiver line item. The response from the budget office was that it was not cutting what is being spent but is instead cutting the budget down to what was spent in FY18. That there are waiting lists and unspent funds indicates a number of problems with the program. Council members agreed that the issues differ with each agency and that the universal case load system may be part of the problem. Bob Mannor stated that care companies give up on participating because of the bureaucracy. It would be helpful for Todd to see what rules are problematic. The Whitmer administration is looking at rules and regulations that are barriers to getting work done. There is no consistency of rules from each agency.

Todd said that DHHS put out a draft POST form. One of the issues is that the form becomes void if certain criteria are met, including a termination date. Caroline Dellenbusch stated the form needs to be reaffirmed after one year, not voided. Councilmembers oppose the one-year limit. Kelly Quardokus suggested googling MI Post for comments. Comments are due April 8. POST is just for out-of-hospital settings. Caroline pointed out that the instruction language is very confusing. Jim Steward said the proposed draft basically makes the form unworkable and destroys its purpose of providing consistency across different care systems. Todd needs to go back to the department with a timeline because it's in the statute. Sandy Mall looked at statute and found a section that states that it "revokes only if contrary to general health care standards." It is not a presumption that if any change occurs that it needs to be reaffirmed. Sandy said he would keep looking into the statute.

Todd reported that Rep. Doug Wozniak convened a meeting with Chris Smith and two legislative chairs on April 16. They are going to talk about family caregiver issues and asset issues. The discussion will

focus on the differences in interpretation of the law. Beth Swagman will provide a written story for Chris to take to the meeting.

Given the new administration, the Section is also looking at reintroducing the pooled trust bill for those over 65. Elizabeth Hertel, the new administrator at DHHS, will be at May 21 legislative day. For anyone intending to attend the ELDRS legislative day, RSVP to Capitol Services. Please bring clients who have been affected by these rules.

**Litigation Committee** – Ray Harris reported that he and Chris Smith are meeting with Mark Cody from the guardianship group.

**Bylaws Committee** – Howard Collens reported that the Committee met twice in March, starting out with benchmarking, and the Committee will see what are other sections are doing.

**Newsletter Committee** – Christine Caswell reported that April 25 is the next due date for articles.

**Administrative Policy Committee** – Because neither Sara Schimke nor Greg Kish were able to attend the April 6 meeting, Kelly Quardokus and Maria Messina Wiersma discussed the promissory note issues. Maria explained that the proposed BEM change would change ability to use promissory notes as a cure for divestment. A response from the section will be ready for the May meeting. This is going to be an opportunity use what Brad Vauter brought up as to the state exceeding federal law. Parts of this are violative of federal law and want to get those comments in. Kelly asked Todd what happens after the comment period, and Todd said the Section has to follow up with the department or the governor's office. Jim Steward thinks we need to take action with the BEM as proposed, looking at Wisconsin where they contacted CMS which clamped down on the agency. We need to do this, too. Don Rosenberg asked if we can seek a declaratory judgment. Jim replied, if so, we would need to do it at the federal level. The POMs deal specifically with notes. David Kerr asked if we should we approach the governor's office. Kelly stated that Michiganders are being punished for not knowing they will one day need Medicaid and trying to take care of themselves. Todd thinks David made a good point about contacting governor's office, giving the new administration the chance to do the right thing. David asked if we should we prepare a draft letter to the governor. Kelly wants to gather stories from other agencies. Bob Mannor said that the promissory notes and home health issues go together. Kelly noted that the Section has an opportunity to submit comments and that we shouldn't let this opportunity go by.

Kelly Quardokus adjourned the meeting at 11:55 a.m.

On April 9, 2019, Maria Messina moved and Terri Winegarden seconded an email motion for the Elder Law and Disability Rights Section to support removing the current questions on the Michigan Bar Examination related to an applicant's "mental, emotional, or nervous condition," and replacing these with questions focused on an applicant's conduct more consistent with the questions proposed by the National Conference of Bar Examiners. The Section further supports the reasoning for its position as articulated in the Chair's letter dated April 8, 2019. Motion passed with 17 ayes, no nays or abstentions with two members not voting.

On April 18, 2019 Sara Schimke moved and Howard Collens seconded an email motion authorizing Harley Manela to plan, organize, execute contracts and any other power necessary to manage the ELDRS Spring Conference, tentatively scheduled for Friday, March 20, 2020 at the Inn of St. John's, and to

authorize a \$1,000 payment payable to Mall Malisow & Cooney PC for organizing the conference.  
Motion passed with 15 ayes, no nays or abstentions, and four not voting.