

**ELDER LAW & DISABILITY RIGHTS SECTION
OF THE
STATE BAR OF MICHIGAN**

PROPOSED MINUTES OF APRIL 5, 2014

TAKEN BY:
JOHN B. PAYNE, SECRETARY
ELDER LAW & DISABILITY RIGHTS SECTION
STATE BAR OF MICHIGAN

**ELDER LAW & DISABILITY RIGHTS SECTION
MEETING OF APRIL 5, 2014**

TABLE OF CONTENTS

| | |
|---|--------------|
| Matter One - Introduction..... | 1 |
| Matter 1.01 Location | 1 |
| Matter 1.01 Attendance | 1 |
| Matter 1.02 Approval of Minutes | 2 |
| Matter 1.04 Treasurer's Report..... | 2 |
| Matter Two - Old Business | 2 |
| Matter 2.01 Spring Conference March 14, 2014 | 2 |
| Matter 2.02 ICLE Collaboration | 2 |
| Matter 2.03 "Whom Should you Trust" Presentations..... | 3 |
| Matter Three - New Business..... | 3 |
| Matter Four - Committee Reports | 3 |
| Matter 4.01 Mental Health Committee – Christine Caswell..... | 3 |
| Matter 4.02 Fall Conference Committee 2014 – Beth Swagman/Robert Mannor | 4 |
| Matter 4.03 Health Care Decision-Making Guide – Caroline Dellenbusch..... | 4 |
| Matter 4.04 Elder Abuse Prevention – Maria Messina | 4 |
| Matter 4.05 POST Committee – Bob Anderson | 4 |
| Matter 4.06 Newsletter – Jane Bassett | 4 |
| Matter 4.07 Unauthorized Practice of Law Committee – Bob Anderson | 5 |
| Matter Five – Legislative Update – Capitol Services, Inc. | 5 |
| Matter Six – Announcements..... | 8 |
| Matter Seven– Future Meetings & Adjourn | 8 |

Matter One - Introduction

Matter 1.01 Location

The meeting convened at 10:05 a.m. on April 5, 2014 at Barron Rosenberg Mayoras & Mayoras, 1301 W. Long Lake Road, Ste 340, Troy, MI 48098.

Matter 1.01 Attendance

| Present/Call-In/Absent | | | Councilors * | |
|-------------------------|--------------------|-----------------|--------------|---|
| Bassett | Jane | A. | * | C |
| Bond | Patrick | J. | Vice Chair | P |
| Buhl | Rosemary | H. | Chair | C |
| Caswell | Christine | | * | C |
| Fuller | Michele | P. | Treasurer | C |
| Goodell | Cynthia | Jill | * | C |
| Kerr | David | | * | C |
| Longstreet | Rob | | * | A |
| Lucius | William | D. | * | C |
| Mannor | Robert | D. | * | P |
| Messina | Maria | Rosaria | * | P |
| Mestelle | Michael | A. | * | C |
| Payne | John | B. | Secretary | P |
| Quardokus | Kelly | McNerney | * | C |
| Schimke | Sara | Ann | * | P |
| Smith | Christopher | William | * | C |
| Steward | James | B. | * | C |
| Swagman | Beth | A. | * | C |
| Vauter | Bradley | A. | * | C |
| Yarbrough-Thomas | Erma | S. | * | P |
| | | | | |
| Anderson | Robert | C. | | C |
| Ard | Josh | | | C |
| Coulter | Dolores | M. | | P |
| Dellenbusch | Caroline | M. | | P |
| Garcia | Darling | | | C |
| Manela | Harley | D. | | C |
| McCleary | David | | | P |
| Rygiel-Sprague | Jacquelyn | A. | | C |
| Sturgul | Paul | | | C |
| Tennis | Todd | | Lobbyist | P |
| Swanberg | Angela | | | C |

Matter 1.02 Approval of Minutes

Approval of the minutes was moved by Jill Goodell and seconded by Brad Vauter. The motion passed unanimously.

Matter 1.04 Treasurer's Report

Michele Fuller provided a report. The February 28, 2014 fund balance is \$103,218.18. The income from the Spring Conference has not been reported yet.

Matter Two - Old Business

Matter 2.01 Spring Conference March 14, 2014

The 2014 Spring Conference had record attendance, 130 people. Materials were provided electronically, only. The materials were updated and available on the SBM website for those who registered. There was one complaint about the switch to electronic-only materials. There was discussion about selling the paper materials after the conference.

Matter 2.02 ICLE Collaboration

Pat Bond and others from the Section met with Jeff Kirkey. ICLE wants to develop Elder Law as a "core area." ICLE plans to move forward with a fall conference downstate and to offer an Elder Law Certificate, without regard to whether the Section is involved in those activities or not. Those Council participants in the meeting with ICLE expressed a consensus that the Fall Conference should continue as it is presently held, but received the impression that "the train had left the station" regarding ICLE's plans.

Harley said that the Spring Conference has always been scheduled so that it does not conflict with the ICLE Medicaid Update or other ICLE events. Harley also observed that he has an ICLE probate certificate and must attend the ICLE certification course every three years to maintain his certificate. Brad Vauter stated that his major concern is that Elder Law is not an appropriate area for ICLE to offer a certificate. Robert Mannor suggested working with the Michigan chapter of the National Academy of

Elder Law Attorneys to offer Certified Elder Law Attorney training.

John Payne moved to schedule the 2015 Fall Conference for September 30 to October 2, 2015 independent of ICLE. Christine Caswell seconded the motion. There was discussion, but several Councilors stated that it was too soon to make such a decision. Robert Mannor moved to table the motion, seconded by Sara Schimke. The motion to table the motion passed.

Matter 2.03 “Whom Should you Trust” Presentations

Robert Anderson urged that councilors contact senior centers for WSYT presentations and contact Danon Goodrum-Garland, (517) 346-6333, at SBM, if any senior center is willing to host a WSYT presentation. The preferred date is August 6, 2014.

Matter Three - New Business

James Steward brought up the legislation that would authorize Department of Human Services Office of Inspector General agents to carry guns and arrest without warrant. He moved to oppose the legislation. John Payne seconded the motion. Robert Mannor expressed concern that a blanket opposition would suggest that the Section is supporting welfare fraud. Dolores Coulter suggested that the Section write a letter explaining its opposition in detail. There was discussion about what points should be addressed and the motion was amended to include reasons for the opposition. James Steward will coordinate a group to draft a letter explaining the Section’s opposition. The motion passed with a unanimous roll-call vote.

Matter Four - Committee Reports

Matter 4.01 Mental Health Committee – Christine Caswell

Rosemary Buhl and Christine Caswell sent thank you notes to the five legislators and James Haveman for their service on the Mental Wellness Commission.

Christine reported that she and Patti Dudek discussed the sample letter

writing campaign as it relates to mental health issues at the Spring Conference. They are planning to proceed with this project to address issues ELDRS professionals see in their own communities. The Ingham County Prosecutor finally dropped the false confession charges against the young man who had been diagnosed with schizophrenia. The prosecutor said he finally had all of the documentation he needed, but the local legal community thinks that public pressure played a role.

Matter 4.02 Fall Conference Committee 2014 – Beth Swagman/Robert Mannor

Beth Swagman moved to send an E-Blast regarding, seconded by Michele Fuller. The motion passed.

Matter 4.03 Health Care Decision-Making Guide – Caroline Dellenbusch

Progress is being made, but there is nothing to bring to the Council, yet.

Matter 4.04 Elder Abuse Prevention – Maria Messina

The committee has been working on gathering information to provide to judges, social workers, etc. The committee also is concerned about nursing homes having residents authorize the facility to gather information and apply for Medicaid. Robert observed that if the committee is looking at long-term care facilities pushing Medicaid, it should also look at assisted living facilities steering residents to the VA Aid & Attendance annuity industry.

A panel planned for the Fall Conference will use case studies to guide discussion and asked that the Councilors provide examples of elder abuse.

Matter 4.05 POST Committee – Bob Anderson

No report.

Matter 4.06 Newsletter – Jane Bassett

Christine Caswell reported that the spring newsletter is coming together.

Matter 4.07 Unauthorized Practice of Law Committee – Bob Anderson

Robert Anderson reported that the Michigan Supreme Court rejected the Bar's offer to develop a comprehensive definition of unauthorized practice of law.

Matter Five – Legislative Update – Capitol Services, Inc.

The Michigan Legislature is on spring recess and will not return to session until late April. Most of the budget subcommittee work has been completed, and when the Legislature returns the full House and Senate Appropriations Committees will begin to sort out the details of Michigan's \$40 billion budget.

SB 843 and 844, which give OIG investigators arrest powers and authority to carry guns, could come up in the Judiciary Committee soon. Kelly Quardokus suggested working with other advocacy groups. John Payne suggested that the costs are underestimated because the necessary training for armed peace officers is not contemplated. The budget for training armed OIG investigators in the legislative analysis would only be sufficient for firearm training, not to qualify the personnel as fully-qualified police officers.

The political scene in Lansing has been rocked by the back-to-back announcements that both Congressman Rogers and Congressman Camp will not seek reelection. Congressman Rogers plans to enter the world of talk radio as a conservative host, but some think that this move is a way to increase his national name recognition for a possible 2016 or 2020 presidential campaign. It could also just be a way to cash in on 14 years in Congress.

The sudden retirements of the two Congressmen have set off a scramble to find candidates to enter the race. Congressman Camp's district has a fairly

strong Republican lean, so the action will be in Congressman Roger's district that is more balanced (though still leans slightly to the GOP). Former Senator Mike Bishop (R-Rochester) and former State Representative Barb Byrum (D-Onondaga) are the early frontrunners to face off in the Rogers seat, while State Senator John Moolenaar (R-Midland) recently announced for the Camp seat.

DCH Budget Moves through House Subcommittee

The House Appropriations Subcommittee on the Department of Community Health reported out a bill that incorporated the majority of Governor Snyder's recommendations. Since the Governor's recommendations were to increase funding to a number of areas that have traditionally been supported by the ELDRS Council, this is good news.

The House Subcommittee retained the Governor's proposal to add \$5 million in one-time funding on top of the \$10 million in ongoing funding to implement the recommendations of the Mental Health and Wellness Commission. The Subcommittee also concurred with the Governor's recommendation to transfer \$7.7 million from the Long Term Care line item for the purpose of expanding the existing Program of All-Inclusive Care for the Elderly to new sites in Flint, Lansing and Saginaw. An additional \$26 million will be added to the MI-Choice Home and Community Based Waiver program in order to add an additional 1,250 individuals who are currently on a waiting list, and additional funds were also approved for the Area Agencies on Aging to serve an additional 1,000 individuals with home-delivered meals, and to address insufficiencies in meals for the current population of 2,700 who are in the program.

In addition to approving the Governor's recommendation, the House Subcommittee also added a line item of \$150,000 for the Michigan Alzheimer's Association for the purpose of initiating a pilot project of enhanced services in three counties: Monroe, Macomb and St. Joseph. This would be the first state funding for the Alzheimer's Association since 2009, when their line item within the Healthy Michigan Fund was eliminated.

Representatives of ELDRS and Probate Section Discuss Digital Assets

In early March, a delegation representing both the Elder Law and Disability Rights Section and the Probate Section met with Representative Kevin Cotter (R-Mt. Pleasant) to discuss legislation he had introduced concerning digital assets. Howard Collens and Todd Tennis represented ELDRS, while Marguerite Lentz and Becky Bechler represented the Probate Section. Both groups expressed concerns particularly in relation to the format of the bill package. Specifically, it was suggested that statutory changes relating to the disposition of digital assets be placed into an entirely new act rather than inserted into several existing sections of the Estates and Protected Individuals Code (EPIC).

Representative Cotter was very open to making changes to the bills and also expressed an interest in reexamining the issue once the Uniform Law Commission releases its own recommendations on the issue (expected later this year). We were relieved to find out that Rep. Cotter was not pressing for fast action on the bills, and he understood the complexity and potential controversy that may surround the disposition of digital assets. We are hopeful that we can continue to work in close partnership with Rep. Cotter on this issue.

Sen. Schuitmaker Working on Substitute for UAGPPJA

After a December meeting between representatives from ELDRS, the AARP, the Alzheimer's Association, the Uniform Law Commission, the Probate Section and the Probate Judges Association, Senator Tonya Schuitmaker (R-Lawton) and her staff began work on a new draft bill that would be an effort to settle concerns raised about her initial bill. The new draft substitute is expected to be available soon, and discussions will likely begin again after it is released.

Offensive Language Bills Move Quickly Through Legislature

Legislation deleting the terms "mentally retarded" and "mental retardation" from Michigan statutes was signed into law on March 28 by Governor Snyder. Representing the first action on recommendations from the Mental Health and Wellness Commission, the Legislature wasted no

time moving the bills from introduction to passage as the entire process took barely over a month. The offensive terms have been replaced with “developmentally disabled” and “developmental disability.”

Todd mentioned CCRC legislation, particularly SB886, that would loosen the rules defining different care levels and the different facilities and was asking for explanation from the Section of how the system works and how the legislation might change things. James Steward and Robert Anderson stated that Wisconsin has a much more developed regulatory scheme for ALFs. Michigan has almost no regulation of ALFs. According to Todd, representatives from the CCRC industry who attended the legislative hearings claimed that the rules for CCRCs are contradictory and need to be relaxed. The package introduced include SB886-89. Todd will talk to Sen. Schuitmaker for explanation of the package and Carolyn Dellenbusch will talk to her contacts in the CCRC community for more information about their interests.

Matter Six – Announcements

Dolores suggested that at the next meeting as many Councilors and Section members try to attend in person to have a more helpful discussion about the ICLE issue.

Robert Anderson asked for Section support of his law firm’s complaint against the State Tax Commission for its confusing guidelines. The Council asked for a draft of the complaint. This will be discussed at the next meeting.

Matter Seven– Future Meetings & Adjourn

The next meeting will be May 3, 2014. The April meeting was changed from Grand Rapids to Troy, so the May meeting was to be scheduled for Grand Rapids. However, there was a desire for as many councilors and members as possible to be present to discuss plans for the 2015 Fall

Conference in view of ICLE's planned fall conference. The Chair stated that the venue for the meeting would be announced.¹

Adjournment was moved by Sara Schimke and seconded by Erma Yarbrough-Thomas. The meeting adjourned at 12:15 p.m.

¹ On Friday, April 25, the Chair announced on the listserv that the May 3, 2014 meeting would be held at the headquarters of the State Bar of Michigan 306 Townsend Street, Lansing, Michigan.