

**AUGUST 2017 MINUTES OF THE
ELDER LAW & DISABILITY RIGHTS SECTION
STATE BAR OF MICHIGAN**

August 5, 2017

Location: Steward & Sheridan, 205 S Main, St Ishpeming, Michigan. Participants had the option to appear by telephone.

Attendance:

- **In Person:** Michele Fuller-Urbatsch*, Caroline Dellenbusch*, James Steward*, Angela Hentkowski*, Robert Anderson.

- **On Phone:** Sara Schimke*, Christopher Smith*, Michael Mestelle*, Theresa Orlaske-Rich*, Kelly Quardokus*, David Sprague*, Christine Caswell*, Robert Mannor*, Jacquelyn Rygiel-Sprague*, Erma Yarbrough-Thomas*, Raymond Harris*, Maria Messina Wiersma*, John Payne*, Erin Mortenson, Susan Chalgian, Darling Garcia, Megan Edmonds, Patricia Kefalas Dudek, Cheryl Hermann, David Kerr, Elizabeth Vincent, Jean Doss, Todd Tennis.

17 out of 20 members of Council were present.

* Indicates Council member.

I. Executive Reports.

1. **Minutes.** The minutes from the June meeting were submitted for Council's approval. **Angela Hentkowski** moved to approve the minutes. **Caroline Dellenbusch** seconded the motion. The June minutes were approved unanimously.

2. **Treasurer's Report.** Beth Swagman was unable to attend the meeting, so an in-meeting treasurer's report will be delayed until the next meeting.

Maria Messina Wiersma asked for an allowance to pay for pamphlet to promote the Fall Conference.

Motion: \$100 for pamphlets to promote the Fall Conference at the ICLE Elder Institute.

Angela Hentkowski moved to approve. **John Payne** seconded. The motion passed unanimously.

II. Committee Reports.

1. Fall Conference.

- a) **Angela Hentkowski** indicated that she will be sending out another e-blast regarding the Fall Conference to the Probate and ELDRS Sections in August. Angela also asked that Council approve the honorariums for the Fall Conference.

Motion: The following honorariums for the Fall Conference shall be paid:

- VISPRO (VA presenters) - Travel expense only.
- Blaine Brockman - \$2,500
- Elizabeth Gallagher - \$250 (if she can accept).
- La'Tina Wright - \$250
- Salli Pung - \$250
- Lewis Seward - \$250
- Jeff Elble - \$100
- Matthew Sullivan - \$100
- Matt Jansen - \$100
- Scott Teter – Mileage.

Caroline Dellenbusch made the motion. **Angela Hentkowski** seconded. The motion passed unanimously.

- b) Angela also talked about the volunteer of the year award. She will request nominations and the executive committee will choose an honoree.

Motion: Council allocates up to \$150 for the purchase of an award of the Executive Committee's choosing for volunteer of the year.

Jim Steward made the motion. **Angela Hentkowski** seconded. The motion passed unanimously.

- c) Angela noted that she received two snack sponsors and she believes the conference is financially sound. Angela asked that our scholarships for the Fall Conference be approved.

Motion: 17 scholarships for the Fall Conference. 12 of those scholarships are for registration and hotel. 5 are for just registration.

Angela Hentkowski made the motion. **Caroline Dellenbusch**. Motion passed with all “yea” votes with **Erma Yarbrough-Thomas** abstaining.

2. **Litigation Committee**

- a) **Raymond Harris** gave the Litigation Committee’s report. **Jill Goodell** is stepping down as the chair of the litigation committee and Ray is taking her place. The Council thanked Jill for her wonderful service.
- b) Unfortunately the Section received an unfavorable decision in *In re Rasmer et al.* by the Michigan Supreme Court. Council thanks **Gary Supanich** for his efforts on the Councils behalf.
- c) The Litigation Committee received a request for assistance regarding a “home of modest value” exception to estate recovery case. The Committee decided that it would not be the best use of the Section’s resources.
- d) In the *In re Hegadorn et al.* matter (SBO Trust litigation) that was decided unfavorably by the Michigan Court of Appeals, **Jim Steward** indicated that they are planning to ask the Michigan Supreme Court for leave to appeal this case.

Motion: The Elder Section of the State Bar of Michigan is asking NAELA of Michigan to allocate \$3,500 from the NAELA litigation fund to support amicus efforts to appeal the *In re Hegadorn* case to the Michigan Supreme Court.

Caroline Dellenbusch made the motion. **John Payne** seconded. The motion passed with all “yea” votes, except **Jim Steward** and **Angela Hentkowski** abstained.

- e) Ray also reported on the Mardigian matter, which the Michigan Supreme Court invited the Elder Section to submit an amicus brief case. This case involved an attorney that drafted a Will where he and his children

received \$16 million. Council had some discussion regarding whether an amicus brief should be filed, but nothing was decided. **Jim Steward** noted that the probate section will almost certainly file an amicus.

3. **Legislation Committee.**

- a) *POST*. *POST* continues to be moving along in the legislature. The Committee wished to update its public policy position for the Physician Order Scope of Treatment (*POST*) legislation (Michigan House Bills 4170-4174). The following motion was made:

Motion (Kelly Quardokus moved; Caroline Delenbusch seconded): The Elder and Disability Rights Section of the State Bar of Michigan supports House Bills 4170-4174 provided that Section 5676(1)(A)(vi) of House Bill 4170 is amended as follows:

(vi) A STATEMENT THAT ~~FOR THE POST FORM TO REMAIN IN EFFECT, THE POST FORM MUST~~ **SHOULD** BE REVIEWED, DATED, AND INITIALED BY EITHER THE ATTENDING HEALTH PROFESSIONAL AND THE PATIENT OR THE ATTENDING HEALTH PROFESSIONAL AND THE PATIENT REPRESENTATIVE, IF ANY OF THE FOLLOWING HAVE OCCURRED:

(A) ONE YEAR HAS EXPIRED SINCE THE PATIENT AND THE ATTENDING HEALTH PROFESSIONAL OR THE PATIENT REPRESENTATIVE AND THE ATTENDING HEALTH PROFESSIONAL HAVE SIGNED OR INITIALED THE POST FORM.

(B) THERE HAS BEEN AN UNEXPECTED CHANGE IN THE PATIENT'S MEDICAL CONDITION.

~~(C) THE PATIENT IS TRANSFERRED FROM 1 CARE SETTING OR CARE LEVEL TO ANOTHER CARE SETTING OR CARE LEVEL.~~

~~(D)~~ (C) THE PATIENT'S TREATMENT PREFERENCES CHANGE.

~~(E)~~ (D) THE PATIENT'S ATTENDING HEALTH PROFESSIONAL CHANGES.

Yeas: Michele Fuller-Urbatsch, Sara Schimke, Christopher Smith, Michael Mestelle, Christine Caswell, Caroline Dellenbusch, Raymond Harris, Theresa Orlaske-Rich, Kelly Quardokus, Angela Hentkowski,

Erma Yarbrough-Thomas, John Payne, David Sprague, Jame Steward, Jackie Rygiel-Sprague, Maria Messina Wiersma.

Nays: None.

Abstain: Robert Mannor.

16 yeas, 0 nays, 1 abstentions. Motion passes.

- b) *Financial Endangerment* bill. Jean Doss indicated that there will be a work group formed before the bill moves much further. **Beth Swagman** was able to briefly meet with Representative Brinks about the bill.
- c) *Elder Issue Group*. Capitol Services indicated that they have gotten the ELDRS Section into a work group that will be regularly discussing elder issues.
- d) *Arbitration*. Patricia Kefalas Dudek noted that many elder groups are opposing the Trump Administration's proposal to allow mandatory arbitration clauses in nursing home contracts and suggest that ELDRS join.

Motion: The Elder Section approves drafting a letter or joining another group in opposition to the Centers for Medicare & Medicaid Services proposal to allow arbitration clauses in nursing home contracts.

Kelly Quardokus made the motion. **Caroline Dellenbusch** seconded. Passed unanimously.

Michele and Patti will work together to get something in before the comment deadline.

- e) *Other legislative matters*. **Robert Anderson** is continuing to look into the family visitation bill. **Jim Steward** noted that Representative Lucido introduced a new guardianship bill that Council should look into. This is Michele Fuller-Urbatsch's representative and she will look into it.
4. **Membership Committee.** Jeff Kirkey approved a complimentary table to the Elder and Disability Right Section at the ICLE Conference. A letter is being prepared to ask individuals passing the State Bar to join the Elder Section.

5. **Community Outreach.** The Elder Section will be participating in the State Bar of Michigan's "Who Should You Trust" Committee. An invite will be coming out and Section member are encouraged to participate.
6. **New Administrative Issues Committee.** A new Committee to concentrative on administrative issues and policy is being formed. The Committee will likely start with caregiver contract and promissory note matters. Robert Anderson, Sara Schimke, Michele Fuller-Urbatsch, and Patti Keflas Dudek are possible initial members.

The meeting adjourned at 12:01 p.m.

Next Meeting: September 16, 2017, State Bar of Michigan, 306 Townsend, Lansing, at 10 a.m.