

ELDRS Section Meeting
August 3, 2019
Steward & Sheridan PLC, 205 S Main St, Ishpeming, MI 49849

Attendance: In person - Christopher Smith*, Caroline Dellenbusch*, Jackie Rygiel-Sprague*, Paul Sturigel, David Kerr, Jim Steward, Ryan Long, Angela Hentkowski*, Erin Blanck, Shannon DeWall; by phone – Kelly Quardokus*, Susan Chalgian*, Nick Ryan*, Jean Doss, Erin Mortenson, Christine Caswell*, Robert Mannor*, Ray Harris*, Sanford Mall*, Howard Collens*, Jean Doss, Krystal Danielak, Angela Hentkowski*, Kimberly Parks, Don Rosenberg, Tracey Rowens*, Terri Winegarden*, Maria Messina Wiersma*, Sara Schimke*, Beth Swagman

Chris Smith called the meeting to order at 10:09 a.m.

Agenda - Angela Hentkowski moved and Caroline Dellenbusch seconded the motion to approve the agenda. Motion approved.

Minutes - Angela Hentkowski moved and Caroline Dellenbusch seconded the motion to accept the June 1, 2019 minutes with corrections.

Treasurer's Report - Bob Mannor presented the section's latest financial report from the SBM. He also requested that if anyone has personal contact with an organization that would be willing to sponsor the Fall Conference to please reach out to those contacts.

Fall Conference Committee - Angela Hentkowski reported that the conference registration is finally up, and she already gotten scholarship applications. Angela requested a motion to approve the speaker stipends so they could be given to the speakers at the conference, but the W-2 needs to match the motion, so Angela will make the motion as soon as she gets all of the W-2 forms.

Membership Committee - Maria Messina Wiersma noted that the updated list of webinars was included in the agenda. The presentations will switch from every month to every other month in the fall. Tracey Rowens has been working on an updated ELDRS brochure. The committee reached out to Jeff Kirkey at ICLE to get a table at the Elder Law Institute. The committee would need a motion to pay for those things. Chris Smith said he will front the cost and then will make a motion for reimbursement. Chris noted that there will be one more webinar with Todd Tennis and Jules Olsman talking about changes to the no-fault insurance law. Additionally, the committee will make a library for past webinars.

Legislative Committee - Chris Smith reference HB 4260 regarding the rebuttable presumption for gifts of \$10,000 or more from "elders." We thought we were successful in getting rid of a specific age for an elder, but the prosecutors and attorney general want an age or they can't prosecute. The current recommendation is 75. Alison Hirschel and Ron Tatro are not going to contest the age. Kelly Quardokus is working on an analysis as to how other states have an age defining an "elder." The Council's first choice is not to have an age. If it goes forward with an

age, how can we do what is best for Michigan? Chris Smith had two thoughts: either change the age in the Social Welfare Act or just let it go into the Criminal Justice Act. There are also provisions in the bill that loans that weren't paid within 65 days were presumed to be fraudulent. Could this be an issue with promissory notes? The automatic presumption is that the gift is fraudulent. Chris said this is still in house committee, so the legislative committee will keep the bill on its radar and keep working with Rep. Wozniak.

Jean Doss reported that the legislature left town in June without finishing the budget and all dates are tentative until September. On June 14, DHHS announced it is delaying the pilot program to financially integrate behavioral health with physical health which originally appeared in executive budget. On June 28, DHHS announced it was going to end the contract with Lakeshore on Oct. 1, citing problems with financial management and allowing a privately run for-profit take over. The 10 PHIP's in Michigan sent a letter saying that it is unfair to remove Lakeshore for financial stress after the legislature repeatedly cut the budget. Jean also reported that calls have increased asking ELDRS to participate in activities and legislation since the May legislative day.

Chris Smith reported that David Shaltz was working on draft legislation regarding DHHS policy. David Kerr volunteered to spend time on the draft. The Council had an invitation to meet with Rep. Wozniak and other legislative members and DHHS. The Council would like to have comments on what its members would want to discuss with DHHS.

Chris Smith reported on the Elder Abuse Take Force stating that if members had concerns about the proposed legislation that now is the time to get these issues to Chris, so he can get comments to the Attorney General's office by next week. The next step will be to wrap up the proposals as formal legislation. Chris is assigning members of council to handle the feedback, know what the proposal says, track it as it goes through the legislative process, and report to the Council. Scott Teter will be at fall conference. Howard, Caroline, and Nick attended listening sessions. Howard reported that he went to the session in Farmington Hills, and most of the folks who spoke were laypeople. The entire focus was on guardianships and visitation issues. People wanted to talk about their specific cases. There were no comments from the audience, the AG, or the Supreme Court justices about the financial institution reporting element.

Chris Smith wants Christine Caswell to look at what is an emergency guardian is versus a temporary guardian. Look at the definition in report. The guardianship accounting form is on page 63 of the agenda. Chris is still trying to understand the concerns. Howard Collens has been appointed to oversee financial institution reporting. Caroline Dellenbush is interested in following the issue of capacity to engage an attorney. We'd like to have input on that. Is there still a fiduciary standard? There is a listening tour in Marquette on August 12.

Administrative Policy Committee – Chris Smith reported that the committee is working on the next step as far as promissory notes. Jim Steward brought up BEM 405. Sara reported that the

committee would incorporate Jim's concerns, as well as look at protective orders and *Vansach*. Greg Kish submitted a FOIA for internal documents regarding this. Chris wanted to know how to prioritize and strategize going forward. DHHS has been making requests in some cases for transcripts from the protective order hearing. Susie Chalgian has filed a reconsideration on redetermination. Chris asked the committee to monitor the *Vansach* issue and to recommend a strategy to the Council.

Litigation Committee - Ray Harris reported there is no update. There are no cases pending. The committee is waiting to see what happens with *Vansach*. Chris Smith recognized Jim Steward and Angela Henkowski's pro bono efforts on following the *Hegadorn* case which was remanded back to the administrative law judges.

Bylaw Committee - Howard Collens reported that the committee needs to meet.

Newsletter Committee – Christine Caswell reported that the Summer 2019 issue should be going out next week.

Other issues: Susie Chalgian, representing the Women Lawyers Association of Michigan, requested the Council to join a coalition for impartial justice. WLAM wants to change a judicial canon. The current canon **suggests** judges should be associated only with impartial organizations that don't discriminate against women, sexual orientation, or ethnicity. WLAM is requesting to make a **mandatory** canon that judges shouldn't be a member of an organization that discriminates against women, sexual orientation, and ethnicity. WLAM wants as many groups as possible to sign on as supporters. The organization wants judges to be aware of what types of organizations they are joining and what biases may be implied. Jim Steward and David Kerr questioned the wording. Susie reported that 46 states have this language. Susie made a motion to request the Council to support the judicial ADA change. There was no second.

Chris Smith reported that the Bar has approved the Council's letter on changes to the mental health questions on the Bar application.

Chris thanked everyone in the Upper Peninsula for the Friday conference and attendance at the Council meeting. Angela Hentkowski mentioned that everyone attending the Fall conference needs to book a hotel room by Sept. 1.

The meeting adjourned at 11:38 a.m.