

ELDER LAW AND DISABILITY RIGHTS SECTION
COUNCIL MEETING MINUTES

DECEMBER 4, 2010
10:00 A.M. - Noon

Chalgian & Tripp Law Offices, PLLC
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1. After review, the draft minutes from the November meeting of the section were approved. They will be posted on the section's website.
3. Rosemary Buhl presented the financial statements. Some of the fall conference expenses were covered, and some of the section membership dues (income) were also showing up. The section is solvent, but at present only the Oct financials were available, and the November financials had not been prepared yet by the State Bar.
3. Old Business
 1. Council Vacancy to replace Diane Kuhn Huff. The members of the nominating committee are the immediate past president, the current president, and the incoming section president. Don Rosenberg, Paul Sturgul and Caroline Dellenbusch. A few names were proposed as a council member to fill the vacancy created by the resignation of Diane Kuhn Huff, but no consensus emerged, and the committee will revisit the issue and make a recommendation at the next meeting.
 2. The Spring Conference plans are going along well. Harley Manela reported that a save the date eblast to various sections was in the works, and most speakers are lined up. Lunch speakers will be arranged with the help of Capitol Services. The event will be held March 4th at the Inn at St. Johns, in Plymouth, and the topics or issues to be covered will include the new estate tax law; mental health law; health care reform law; Medicaid waiver programs; Medicare updates and pending changes in Medicaid and DHS BEMs.
 3. The Nursing Home Model Contract group is still working on the issue, and may have a draft soon, but otherwise there is not much to report at this time.
 4. An update was given about a possible section newsletter, by John Payne and John Arenz. Also helping with the efforts will be Christine Caswell. Distribution would be by electronic means to keep expenses low.
 5. Social Security Disability - Mental Impairment Definition - Paul Sturgul reported that the section weighed in on proposed rules regarding the evaluation of mental disorders (docket no. ssa-2007-0101) along the lines of comments suggested by David Shaltz. We raised the issue of standardized testing criteria that might block some with mental illness from qualifying for Social Security Disability.

5. Committee Reports

1. POLST Committee has continued to meet and have worked on many drafts in order to find agreement among the community on a form that everyone could embrace.
2. Litigation Committee—looking at continued problems facing Medicaid applicants, among others, and trying to make sure a proper case can be brought is still on the docket. Promptness issues are commonplace, but various attorneys have crafted strategies of their own, which can circumvent the need for an appeal at the court of appeals level. Suggestions and ideas for the right case are still welcome by the committee.
3. Health Care Reform Committee - Dolores Coulter says the group has not been real active of late. She did note that discussions about the state mandated programs or pools under the federal health care reform act have been continues, and she also noted that this could present an opportunity to expand Medicaid eligibility to all persons with incomes below 133% of the federal poverty level. Under the current eligibility rules adults (non-nursing home residents) without minor children are not eligible for Medicaid unless they are disabled per the Social Security definition of disability, or over age 65. If they are disabled or over age 65 they are eligible under the AD Care category, but the income limit is 100% of the federal poverty level. For every dollar that the state spends on medical care for a Medicaid eligible individual, the federal government reimburses the state \$ 0.66. The health care reform act mandates this expanded eligibility beginning in 2014 but gives states the option to amend their state plans to implement it prior to 2014.
3. Legislative Committee - Brad Vauter reported that some ideas had been sent his way, but that he would remind council members again to make suggestions for possible administrative or legislative proposals that would make a positive change in the lives of the elderly or disabled.

6. New Business discussion centered largely on the following issues:

1. BEM 405 Pooled Trusts -
2. BEM 400 Jointly Owned Real Property and
3. Proposed Retainer - Capitol Services

The BEMS and the position of DHS sometimes creates problems for applicants, and discussion ensued as to what approach, if any, the section or individual members could take on behalf of Medicaid applicants. These areas might be worthy of a meeting with DHS in the new administration or even legislative, rulemaking or court challenges.

Discussion about the wisdom and value of retaining the services of Capitol Services, or any lobbyist or legislative consultant ensued. Originally the firm was hired to help with estate recovery legislation and other pressing issues, and some qualms were raised about spending money on such

services now especially without the section having a specific legislative agenda. Some present noted that we are all allowed to be citizen activists, and so, with that in mind, why wouldn't the section just make sure the members had word about pending legislation and let the members respond accordingly? Others noted that we tell members that the legislative work is a reason to belong to the section. Realistically, having a lobbyist helps us be present at the table, and frees attorneys to do their work on a day to day basis, with alerts issued when we need to step up our contacts with legislators, or via appearance at hearings, etc.

The proposed fees for Capitol Services was in line with fees we had paid a few years previously, but it was a bit unclear as to how many "issues" Capitol Services would be focusing on – and if areas of focus could change during the year. A suggestion about having a lobbyist at the federal level was also mentioned, but several thought NAELA and others provided enough federal perspective, and we'd be prudent to only worry about the state level administrative and legislative initiatives with the help of lobbyists. It was also noted that the proposed contract allowed both sides some escape room--with proper notice--so that less than a year's worth of service could be purchased, and/or the contract could be brought to an end before the year was out.

After discussion, it was moved, seconded, and approved, to approved the contract with Capitol Services.

7. Legislative Update: Capitol Services

The election results were noted—virtually 2/3's of the representatives and senators in Lansing are new to their jobs, so education efforts may be critical in the first several months of this session. One of the new cadre, is from the Mt. Pleasant area, and his previous work included an association with an elder law attorney from Mt. Pleasant, and this connection and others might provide a connection to legislators.

Next Meeting: The February meeting will be held at Don Rosenberg's office in Troy, Michigan on Saturday, February 5, 2011 beginning at 10:00 a.m.