

## **Elder Law and Disability Rights Section Meeting minutes**

**December 3, 2011, Chalgian and Tripp Law Offices, PLLC**

Present in person: Dolores Coulter, Ellen Hoekstra (Capitol Services), Todd Tennis (Capitol Services), Michael Mestelle\*, Brad Vauter\*, Kelly Quardokus\*, Gary Britten, J. David Kerr\*, John Payne\*, Christine Caswell, Rob Longstreet\*, Amy Tripp, Jill Goodell\*, Sara Schimke\*, Beth Swagman\*, Caroline Dellenbusch\*, Doug Chalgian, Rosemary Buhl\*

Present via telephone: Bob Anderson, Sandy Mall, Harley Manela\*, Pat Bond\*, Angela Swanberg, Art Malisow\*, Paul Sturgul\*, Michele Fuller\*, Jim Steward\*, Josh Ard.

\*Indicates voting council members.

1. Meeting began at 10:00 am. Introductions were made for those present, and via telephone.
2. Minutes:
  - a. The November meeting minutes were approved, with minor revisions. Motion made by John Payne, Seconded by Rob Longstreet, motion passed unanimously.
3. The Treasurer's report was not provided to the Section Treasurer yet from the State Bar. Tabled until next meeting.
  - a. Discussion was held regarding the payment of Brad Gellar for coordinating the fall conferences in 2010 and 2011. He did not accept payment for his services in 2010, but has now asked for both years payment.
  - b. Motion made by John Payne to approve the payments to Brad Gellar for \$2500 for coordinating the Fall 2010 conference and for \$2500 for coordinating the 2011 fall conference. Seconded by Kelly Quardokus. Motion passed unanimously by all voting council members listed above.
  - c. David Kerr expressed the need for a comprehensive budget. Council members were in agreement that this needs to be addressed.
  - d. Discussion was held regarding the status of the payments to Michael and Myra Gilflix for their involvement in the fall 2011 conference (including airfare and other expenses). Pat Bond, Treasurer was going to follow up on this.
4. Legislative Update (For complete analysis of the legislation, and other activity reported on, please see December Legislative Reports prepared by Capitol Services)
  - a. Health Care Exchange—moving very slowly.
  - b. Estate Recovery—Discussion by Todd & Ellen. No news is good news. However, it is not dead. Brad Vauter and John Payne have been

gathering data regarding the amount collected, as previous data is old. This is not being provided to the general public, rather for our review at this time. Doug Chalgian, a past chair, expressed significant concern over the use of this data, which is not particularly favorable to our position. Ellen reiterated that the information was being collected so that we could be prepared, not as a part of our argument, per se. Emphasis is still on 1) unintended consequences of the legislation—loss of tax revenue, more abandoned homes, etc, 2) targets most vulnerable seniors, 3) exploitation of seniors from predatory organizations that will come out of woodwork to “save” people’s homes.

- c. Vulnerable Adult Package –discussion held regarding best way to address these bills. Doug Chalgian expressed that in his opinion the majority of the bills were innocuous, and do not accomplish anything for seniors. He recommended that the council take as firm stand against supporting the legislation, asserting that Estate Recovery is the real Vulnerable Adult issue at hand. Significant discussion ensued. Ellen Hoeskstra, section lobbyist, stated that as the council has already publicly supported the bills, she would not recommend that the council change its stance. Rather, the support of the legislation can lead into further discussion regarding how the Estate Recovery legislation would be contrary to the movement to protect vulnerable adults. .
  - d. Ellen continued her recommendation that council members contact their Senators regarding Estate Recovery.
  - e. No Fault—Was pushed through house committee, but probably won’t get out to the floor. They appear to be 10-15 votes short to get it passed. Doubtful that the Senate will take it up. History--This issue had been addressed 2x in the past in 1992 and 1994. Both times referendums were successful to overturn. This issue is not going away, but it may change as the insurance industry needs to make a deal to make it work. Helmet law is somewhat tied to this, at least in the eyes of Gov. Snyder. Looks like that is on hold too.
5. Old Business
- a. Fall Conference 2011—No update. Vote discussed above.
  - b. . Spring Conference 2012— (discussion moved up on agenda to accommodate Harley Manela—coordinator)
    - i. Harley Manela stated that the conference is scheduled for Friday March 16, 2012 at the Inn at Saint John’s in Plymouth. The plan is to have the March Section meeting held the following day. (March 17, 2012).

- ii. Judge Mack has agreed to participate regarding guardianship issues. Harley is intending to assemble a panel. It was suggested that representatives from the POLST committee could be a part of the panel.
  - iii. MA update will have panelists.
  - iv. Other topics:
    - 1. Marketing
    - 2. How to prevent malpractice (Bob Anderson and John Bos are presenting)
    - 3. Health Care reform.
    - 4. Mortgage resources—Brad Vauter volunteered that Elderlaw of Michigan is certified by HUD to council on reverse mortgages. Other options are Michigan Poverty Law Program (MPLP) or possibly Judge Mack.
  - v. Lunch—Harley is trying to get the State VA general council to give us an update on what the state is doing regarding VA.
  - vi. Discussion was held regarding possibility of breakout sessions.
  - vii. Harley and Ellen to coordinate to see if Senators Marlow and Haynes can participate, as they are working on the healthcare exchanges.
  - c. BEM 405 Pooled Trusts—Sandy Mall/Michele Fuller—See Litigation Committee Report
  - d. Estate Recovery FOIA—Brad V. and John Payne have made some requests, have not received responses yet. No costs yet incurred. Will soon need to make decisions regarding how to follow up on requests.
  - e. By-law Changes—conversation tabled, however, Angela Swanberg volunteered to participate on the committee.
  - f. Translation of DPA & PAD—no update
  - g. Budget- tabled
6. New Business
- a. Fall Conference 2012—Report was given by Beth Swagman regarding status of conference and Committee interaction with Brad Gellar.
    - i. Discussion was held regarding future of conference, and Brad's involvement. Suggestions were offered by several past chairs regarding how to proceed. Council members agreed that we need to have a quality conference and changes need to be made. Consensus is that council wants to continue with Brad's involvement, but that council needs to take a more active role. Caroline will follow up with Brad to discuss more details.

- ii. Motion was made by Brad Vauter to approve the down payment to reserve Crystal Mountain. Seconded by Michael Mestelle. Motion passed unanimously.
  - b. SBM Draft Social Media Policy--tabled
- 7. Committee Reports
  - a. POLST—Bob Anderson, Caroline Dellenbusch and Jim Steward all contributed to the conversation to report that there are a lot of developments.
    - i. Committee now also includes EMS, MI Hospice and NH Physicians.
    - ii. National expert on the issue, Charlie Sabatino participated in recent conference calls. He discussed the pilot program in NY. The POLST committee is now working with DCH moving toward a pilot program.
    - iii. Big concern is that POLST committee members are not yet in agreement regarding how a DNR should be treated. Attorneys are contending that it should be a separate document. Physicians are fighting this. More work is still needed to get a consensus.
    - iv. Future steps include POLST legislation, and the Committee will need the lobbyists to assist
    - v. Probate Section is also looking closely at the POLST issue. They are putting language together for proposed legislation and will be forwarding it to ELDRS. ELDRS does not need to recreate the wheel.
  - b. Litigation Committee—Sandy Mall—
    - i. Sandy has contacted Janet Welch about the payment to section members, and restrictions. Does not yet have feedback from her.
    - ii. The Committee report will be posted to the list-serv.
    - iii. Pooled Account Trust –Federal complaint to be filed within the next 1-2 weeks.
    - iv. IRA/401k—A preliminary injunction is to be filed in Federal court. Use of spousal refusal and probate court were also discussed.
    - v. Dual Certification of Beds—no action.
    - vi. Standard of Promptness—no action .
  - c. Health Care Reform Committee—Dolores—no report
  - d. Legislative Committee—Brad V. –Request made to council members for more input regarding opinions as to the real impact of proposed legislation. If council or section members are more aware of an issue, that needs to be shared with council. Want to make sure we are putting our

support behind legislation that really matters, and not just what looks good for the Sponsor of the legislation.

- e. Newsletter—John Payne --Good feedback on last newsletter. Next issue deadline is in January. Christine Caswell will be sending out reminders.
  - f. Unauthorized practice of Law—No report.
  - g. Fall Conference Committee—see new business
8. Announcements—none
9. Upcoming meetings:
- a. January 7, 2012 Meeting at Office of Caroline Dellenbusch & Beth Swagman 2944 Fuller Ave NE, Ste 100 Grand Rapids, Michigan 49505.
  - b. February 4, 2012 Meeting at Chalgian & Tripp Law Offices, PLLC 1019 Trowbridge Road, East Lansing, MI 48823.
  - c. March meeting will be held on **Saturday March 17<sup>th</sup>** (Day following the Spring conference) at the Inn at Saint Johns, in the Wisdom Room.
10. Motion made by John Payne to Adjourn, seconded by Beth Swagman. Passed unanimously.

Meeting ended at 12:05pm

Respectfully submitted by Rosemary H. Buhl