

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

**MINUTES OF DECEMBER 1, 2012**

TAKEN BY:  
PATRICK J. BOND, SECRETARY  
ELDER LAW & DISABILITY RIGHTS SECTION  
STATE BAR OF MICHIGAN

# ELDER LAW & DISABILITY RIGHTS SECTION

## MEETING OF DECEMBER 1, 2012

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# Matter One - Introduction

## Matter 1.01      Location

Meeting took place at J. David Kerr's office located at 205 South Main St., Mt. Pleasant, Michigan.

## Matter 1.02      Present at Meeting

Physically:

- \* J. David Kerr
- \* Rosemary H. Buhl
- \* Jane A. Bassett
- \* Michael A. Mestelle
- \* Caroline M. Dellenbusch
- \* Bradley A. Vauter

Total: 6

\* = Council Member

Telephone:

- \* Patrick J. Bond
- \* Christine Caswell
- \* William David Lucius
- \* James B. Steward
- \* Kelly J. McNerney Quardokus
- \* Michele P. Fuller
- \* John B. Payne
- \* Christopher William Smith
- \* Beth A. Swagman
- \* Cynthia Jill Goodell
- Dolores M. Coulter
- Harley D. Manela
- Paul A. Sturgul
- Todd Tennis (Capitol Services, Inc.)

Total: 14

\* = Council Member

## Matter 1.03      Approval of Minutes

John Payne motioned to approved Minutes. Held: approved

## Matter 1.04      Treasurer's Report

State Bar did not provide financials before this meeting took place. Thus, no report given.

## Matter 1.05      Legislative Report

See report of December 2012 by Ellen Hoekstra and Todd Tennis, our lobbyists from Capitol Services, Inc. Some of the more pertinent issues are discussed below:

**(a) Blue Cross Legislation**

Blue Cross Legislation – bills have not yet moved upon. The committee did meet, but nothing done. A representative from Elder Law of Michigan (Brad Vauter) and a member from the AG office both testified suggesting slight modifications to SB1293 and SB 1294. And in his personal capacity, Christopher William Smith, a member of our Section Council, also testified.

**(b) Right to Work**

Right-to-work means that unions can't require an employee be fired for declining to pay union dues or agency fees, while maintaining a union's ability to collectively bargain. Organized labor is opposed to the legislation.

Governor is not in favor of a right to work state. Republicans are in favor of it, and Democrats are not.

Next year republicans will have a 59-51 majority, which is slightly less of a majority they had in 2012.

**(c) State Run Health Exchange**

State Run Health Exchange vote in Committee failed. Only two republicans voted in favor. It's like a kayak.com for health insurance. Affordable Care Act (ACA) says a state can create it itself or the feds can do it for us. In other words, the vote meant that the State is going to let the federal government handle it.

**(d) Trust Code**

Legislation dealing with the trust code coming up. It relates to decanting. The Probate Section is closely dealing with it.

**(e) Energy Assistance Program**

Legislature is discussing an Energy Assistance Program, which would create a new surcharge on utility bills.

**Matter Two -  
Old Business**

**Matter 2.01 Pooled Trusts**

The legislation introduced late this year will need to be reintroduced starting in the next legislative session.

## **Matter 2.02      Consultant Membership**

We continued discussion about whether we want "consultant" members to join the Section, and whether we want that to remain limited to individuals from non-profit organizations and even though they may not be attorneys. There was a wide range of thoughts among Council members on how to implement it.

The Council discussed whether non-attorney member requests should be referred to a committee or decided by the Council. There was also discussion about whether the by-laws should be amended with regard to non-attorney consultant members.

Rosemary Buhl, along with the help of Kelly Quardokus, will report on this at a later meeting.

## **Matter 2.03      Public Outreach Committee**

Nothing much reported of significance at this time.

## **Matter 2.04      Senate Bill 2093 and 2094 (Blue Cross / Medigap)**

See Legislative Report above at Matter 1.05.

# **Matter Three - New Business**

## **Matter 3.01      Section Budget**

Brad Vauter started this discussion in prior meetings. And treasurer John Payne prepared a proposed budget for review and to help arouse discussion and thought.

Payne will edit his budget draft after having taken comments from Council, and will present an updated budget for approval in an upcoming meeting. Payne is willing to set up a conference call for those who would be willing to help with preparing a budget.

The budget draft will be updated once more exact information about fees generated from membership dues and more exact information about conference cost is obtained.

## **Matter 3.02      Contract Approval – Capitol Services (lobbyist)**

Our lobbyist's contract expires next month. John Payne motioned to approve the proposed Capitol Services two-year contract and with an increase of three percent per year. Motion seconded by Mestelle. Held: Motion approved. Monthly fee will be \$1,545 per year for year 2013 (\$1,500 plus 3%), and \$1,591.35 for year 2014 (\$1,545 plus 3%).

### **Matter 3.03      Fall Conference / Spring Seminar**

#### **(a)      Spring Conference**

Harley Manela provided the discussion. Chris Smith volunteered to be in charge of the person to speak on the Medicare topic.

Harley is finding other speakers via help from Capitol Services for some, and

Spring Conference will be held on Friday, March 15<sup>th</sup>. And the monthly conference will not be the day after anymore. It will be on the first Saturday of the month, as usual.

#### **(b)      Fall Conference**

Fall Conference is slated for Oct 1-4, 2013 (Tuesday through Friday). But the conference event (i.e., the first speaker will speak) will actually begin on Wednesday at noon, as usual.

Where:

Crystal Mountain Resort & Spa  
12500 Crystal Mountain Drive  
Thompsonville, Michigan 49683.

Beth Swagman, committee chair, is looking for input for speakers. Respond to her, or anyone on the committee, by December 10, 2012.

Motion by Beth Swagman that Section speakers no longer be granted neither honorariums nor room accommodations. But Section speakers will have the conference registration waived, but will not be prevented from asking for (and obtaining upon Council approval) a scholarship. Held: motion approved.

### **Matter 3.04      Bylaws**

Carolyn Dellenbusch and Rosemary Buhl are on this ad hoc committee regarding "consultant membership". See Matter 2.02 above.

### **Matter 3.05      SBM Diversity Pledge**

See [http://www.michbar.org/news/releases/archives10/9\\_1\\_10\\_SBM\\_AM\\_reception.cfm](http://www.michbar.org/news/releases/archives10/9_1_10_SBM_AM_reception.cfm). Below is the State Bar language.

"The State Bar of Michigan is urging its members to sign a Michigan Pledge to achieve diversity and inclusion in the legal profession.

"The SBM Board of Commissioners unanimously adopted the pledge at its July 23 meeting in Lansing. It was the culmination of the efforts of attorneys across the state who participated in three colloquia held early this summer by the SBM Equal Access Initiative.

"A recent American Bar Association study shows that the legal profession lags in diversity, with people of color making up only 10 percent of the population of the profession, compared to 25 percent of medical doctors, 21 percent of accountants, and 18 percent of college professors. In Michigan, attorneys of color make up approximately 15 percent of the attorney population.

"At its foundation, the legal profession is focused on problem solving," said State Bar President-Elect W. Anthony Jenkins. "This is best achieved by including people from diverse backgrounds and experiences, and by valuing differences. Diversity brings with it broader rather than less citizen participation in governance, and in turn yields greater trust in how government works and in the rule of law.'

"In conjunction with this effort to boost diversity and inclusion, a reception will be held from 6:30-8:30 p.m. on Thursday, Sept. 30, 2010, at the B.O.B., which is located at 20 Monroe Avenue Northwest in Grand Rapids. The event will also coincide with the SBM Annual Meeting."

To sign the Pledge, visit [www.michbar.org/diversity/](http://www.michbar.org/diversity/).

A short discussion occurred regarding this pledge simply being a hollow gesture and thus such pledge doesn't necessarily hurt nor help in this effort. But there was no members present that thought diversity in the profession was a bad idea—not very surprising given our members are attorneys, and thus dedicated to personal liberties, equal protection, fundamental fairness, and the importance that opportunities are made available to all. Section Chair, Brad Vauter, will invite someone to speak at an upcoming Council meeting regarding this issue.

## **Matter Four - Committee Reports**

### **Matter 4.01      POLST Committee**

Nothing important to report at this time.

### **Matter 4.02      Litigation Committee – Sandy Mall**

Harley spoke in place for Sandy Mall.

#### **(a)      Standard of Promptness**

This issue has been discussed in many Council meetings. But Harley reminded us that the standard of promptness issue is still a problem, and suggested if we found plaintiffs that this issue would be worth Council's efforts to correct. Two standard of promptness issues:

First, the forty-five day issue: A Medicaid long-term care applicant files his application and does not get a decision from DHS within forty-five days, often, in some circumstances, taking many months before DHS moves on the application.

Second, the ninety-day administrative denial. Your Medicaid application is denied. Then you file your Hearing Request and nothing happens in ninety-days. In other words, when you file your Request for Hearing for your Fair Hearing, the whole thing needs to be concluded in ninety days—from the hearing to the decision. Often this is taking much longer.

**(b) Dual Certification**

Relates to not all nursing facilities' medicare beds being certified for Medicaid. Council is still considering funding a class action lawsuit.

**Matter 4.03 Health Care Reform Committee**

See Section Matter 1.05(a) above

**Matter 4.04 Legislative Committee**

See comments in Section 1.05 above.

**Matter 4.05 Newsletter**

Christine Caswell continues her work. And, John Payne, our tireless newsletter editor, has asked to step down. Jane Bassett will be taking his place as newsletter editor.

**Matter 4.06 Unauthorized Practice of Law**

No report at this time.

**Matter 4.07 Public Outreach Committee**

Nothing important reported, as indicated in Matter 2.03.

**Matter Five -  
Announcements**

Getting back to the Section Budget issue in Matter 3.01, Brad Vauter suggested part of the budget that John Payne presented on might be to add printing costs for material (related to the trust seminar) even though this might be the Bar responsibility, first and foremost.

## **Matter Six – Future Meetings & Adjourn**

Next meeting in January 5, 2013, at Chalgian & Tripp Law Offices PLLC, located at 1019 Trowbridge Road, East Lansing, Michigan 48823.

Meeting adjourned at 12:33 p.m.