

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

MINUTES OF DECEMBER 7, 2013

APPROVED FEBRUARY 1, 2014

TAKEN BY:
JOHN B. PAYNE, SECRETARY
ELDER LAW & DISABILITY RIGHTS SECTION
STATE BAR OF MICHIGAN

ELDER LAW & DISABILITY RIGHTS SECTION MEETING OF DECEMBER 7, 2013

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Matter One - Introduction

Matter 1.01 Location

The meeting convened at 10:00 a.m., at Bassett & Associates, PLC, 2045 Hogback Road, Ann Arbor, Michigan 48105.

Matter 1.02 Attendance

Councilors			Present/Call-In/Absent
Bassett	Jane	A.	P
Bond	Patrick	J.	C
Buhl	Rosemary	H.	P
Caswell	Christine		P
Fuller	Michele	P.	A
Goodell	Cynthia	Jill	C
Kerr	David		P
Longstreet	Rob		C
Lucius	William	D.	C
Mannor	Robert	D.	P
Messina	Maria	Rosaria	P
Mestelle	Michael	A.	C
Payne	John	B.	P
Quardokus	Kelly	McNerney	C
Schimke	Sara	Ann	P
Smith	Christopher	William	P
Steward	James	B.	C
Swagman	Beth	A.	C
Vauter	Bradley	A.	P
Yarbrough-Thomas	Erma	S.	C
Others Attending			
Anderson	Robert	C.	C
Ard	Josh		C
Coulter	Dolores	M.	P
Dedden Cooper	Lisa		P
Dellenbusch	Caroline	M.	C
Hoekstra	Ellen		P
Murray	Amanda		P
Swanberg	Angela		C
Sturgul	Paul		C
Tennis	Todd		P
Woods	Audra		P

Matter 1.03 Approval of Minutes

Proposed Minutes of the November 2, 2013 meeting were offered by John Payne. Jane Bassett moved to approve the minutes. Sara Schimke seconded. The minutes were approved on a voice vote.

Matter 1.04 Treasurer's Report

Michele Fuller, Treasurer, was not present. No treasurer's report.

Matter 1.05 Legislative Report

See report of December 2013. Todd Tennis, Capitol Services, Inc. (CSI) reported that the legislature is on holiday recess. This is year one of a two-year session.

The Court of Claims law went through legislature so quickly that elimination of the right to jury trial was not noticed. There is a trailer bill to restore the right to jury trial that is also moving very quickly.

David Kerr proposed that the Section advocate appropriation for room and board for indigent hospice patients in the 11 hospices affected by a recent Centers for Medicare and Medicaid Services (CMS) restriction on such coverage. CMS regulates Medicare and Medicaid. CSI will try to get clarification of what is happening with this issue.

Some of the more pertinent issues are discussed below:

(a) Pooled Trust Legislation

This is HB-4013. CSI provided a revised letter in support of the legislation and continues to meet with legislators trying to find an accommodation for perceived problems from DHS's point of view.

(b) Telecom Bill

The Telecom Bill is scheduled for hearings in the House Energy and Technology Committee next Tuesday, December 10, 2013. Ellen Hoekstra said that this indicates that it is likely to pass.

(c) Uniform Adult Guardianship and Protected Person Jurisdiction Act

Rosemary Buhl, Brad Vauter and Jim Steward will be meeting with stakeholders and other principals such as Judge Mack regarding the UAGPPJA on Friday, December 13, 2013. Probate Section is opposed but has not taken a formal position. Lisa Dedden-Cooper observed that the Probate Section recommended approval, but then changed its position. She will provide a copy of the report from that time. David Kerr reiterated that there are reasons why the Probate Section could not reach a consensus in support of the Act.

Matter Two - Old Business

Matter 2.01 Pooled Asset Trust Legislation

See Legislative Report.

Matter 2.02 UAGPPJA

See Legislative Report

Matter Three - New Business

Matter 3.01 Federal Legislation—Patti Dudek/Bob Anderson

Patti Dudek suggested support and grass root lobbying for Special Needs trust Fairness Act. John Payne moved that the Section support the bill and Christopher Smith supported the motion. There was discussion. The motion passed unanimously on a roll-call vote.

Robert Anderson brought up Disabled Military Child Protection Act, which would allow military survivor's benefits to be assigned to a Special Needs Trust. Jane Bassett moved that the Section support the bill and Bob Mannor seconded it. The motion passed on roll-call vote. Brad Vauter and David Kerr abstained. All others voted in favor of the motion.

Robert Anderson brought up the federal "observation status" bill, HR 779. Observation status pertains to hospitalization that is not considered "inpatient." This has recently become more prevalent and presents a problem when a patient goes to a rehabilitation facility from a hospital stay that is not inpatient. Eligibility for skilled care depends on inpatient status, so many patients are unpleasantly surprised to find that they are not covered for Medicare skilled care despite hospital stays exceeding two days. Brad Vauter moved that the Section support the bill. David Kerr seconded the motion, which passed on a roll-call vote, unanimously.

Patti mentioned the Excellence in Mental Health Act and a position by NAELA that PATs should not be age-limited.

Matter 3.02 Hughes v. McCarthy – Sixth Circuit – Dolores Coulter

Dolores Coulter discussed Community Spouse annuity case out of Ohio. Sixth Circuit said that a CS annuity did not have to name the state as the beneficiary because the exception from the divestment rules for CS sole-benefit transfers is entirely separate from the general divestment regime. John Payne moved that the Section send a letter to DHS recommending a change in the Bridges Eligibility Manual to conform to the case. This was seconded by Jane Bassett. Motion passed on voice vote, unanimously.

Matter 3.03 SCAO Forms Committee

Rosemary Buhl brought up the forms committee on guardianships and conservatorships, of which she is a member. She will be stepping down from the committee and asked for a volunteer. The meeting is once a year in Lansing. Jane Bassett volunteered to take Rosemary's place.

Matter 3.04 Alzheimer's Association Check-Off

Alzheimer's Association has a campaign to support the check-off. The check-off will be mentioned in the newsletter. Jim Steward expressed reservation about the Section endorsing a particular charity. Jane Bassett suggested that there is a distinction between mentioning and endorsing a charitable campaign.

Matter Four - Committee Reports

Matter 4.01 2014 Fall Conference Committee – Beth Swagman

Beth Swagman reported on 2014 Fall Conference. The Committee has several national speaker candidates. The Committee is talking to conference planning professionals. Bids from conference planners are expected.

Matter 4.02 POST Committee – Robert Anderson

Robert Anderson reported that the POST Committee has been inactive while waiting for circulation of a decision-making guide. They are discussing a narrative, rather than Q&A decision-making guide. He talked about PA 155, 156 and 157, which changed the DNR rules. DNR changes will be effective in February 2014.

Matter 4.03 Litigation Committee – Sandy Mall

Sandy Mall was not present. Sandy told Rosemary Buhl that the litigation committee has several issues on which they are looking for plaintiffs. Christopher Smith said that the litigation committee has primarily consisted of Sandy, Harley and him. Brad Vauter brought up the budgetary problem of funding litigation that may or may not pay back the costs. He mentioned possible outside sources for litigation funding. According to Brad, Cliff Flood at SBM said that the Bar wants funding to go through the Bar.

Center for Civil Justice is a charitable organization. Private sources could give to Axis for Justice, earmarked for Center for Civil Justice, to fund the Section's litigation. Private sources could also contribute to the Section, to be maintained separately for litigation. Patti Dudek mentioned that NAELA has a foundation to support litigation.

Sara Schimke mentioned waiver/SNT issue. There was a hearing on refusal of DHS to exclude SNT funds in an asset determination for services under the Home and Community-Based Waiver.

Matter 4.04 Newsletter – Jane Bassett

Deadline is January 25, 2014.

Matter 4.05 Unauthorized Practice of Law – Robert Anderson

Robert Anderson sent Rosemary Buhl a memorandum from Janet Welch regarding the definition of practice of law, which will be the Bar’s opinion of what constitutes the practice of law. He suggests that the Section provide someone to work with the UPL Committee and the Probate Section. Robert Mannor, Brad Vauter and David Kerr will work on the UPL Committee and help promote “Who Do You Trust” presentations at schools and other venues around the state, similar to the presentations last year.

Matter 4.06 Mental Health Issues – Christine Caswell

Christine Caswell mentioned the ABA mental health parity article that she had distributed to the Council before the meeting. She also said she would follow up on the Excellence in Mental Health Act, S. 264, sponsored by Sen. Debbie Stabenow.

Matter 4.07 Legislative – Brad Vauter

Jill Goodell is working to make the Section pages on the SBM website more robust and relevant. She would like suggestions to for the Section pages. Send suggestions to Brad Vauter or Jill Goodell. The Bar is planning to give the sections more ability to put information on the website. Patti suggested a brief and hearing decision bank for members only. Brad Vauter asked about multi-level access, but the Bar said there would be technical problems with that.

Matter 4.08 Vulnerable Adult Abuse – Maria Messina.

Robert Mannor, Maria Messina and Audra Woods met to start a program to combat elder abuse and provide educational efforts directed at for judges, police and others.

Matter 4.09 Community Outreach – Kelly Quardokus

No Report.

Matter 4.10 Care Advocacy – David Kerr

David Kerr is concerned about restrictions in Medicare and other insurance on peripheral benefits like repair of stents and cost of overnight company after surgery.

Matter Five– Announcements

David Kerr mentioned that Department of Community Health is expected to submit a plan regarding the Long-Term Care Partnership to CMS.

Brad Geller announced that the Ombudsman’s program will be moved out of state government. RFPs will be solicited.

Legal Services Developer at Office of Services to the Aging position is open and will be posted.

Gift of Life will be establishing a statewide registry of health-care directives.

Translations of the advance directive booklets into Arabic, Italian, German, and Korean are nearing completion.

The Ombudsman's office will poll nursing homes regarding the prevalence of guardianships among their residents.

Matter Six– Future Meetings & Adjourn

Next meeting is January 4, 2014, at Chalgian & Tripp, 1019 Trowbridge Road, East Lansing, Michigan 48823.

Christine Caswell moved to adjourn, seconded by John Payne. The meeting adjourned at 12:46 p.m.