

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

**MINUTES OF DECEMBER 6, 2014**

TAKEN BY:  
MICHELE P. FULLER, SECRETARY  
ELDER LAW & DISABILITY RIGHTS SECTION  
STATE BAR OF MICHIGAN

**ELDER LAW & DISABILITY RIGHTS SECTION  
MEETING OF DECEMBER 6, 2014**

**Matter One Introduction**

**Matter 1.0 Location**

Bassett & Associates, 2045 Hogback Road, Ann Arbor, MI 48105.

Meeting convened at 10:06 a.m.

**Matter 1.2 Attendance**

In person: Bassett\*, Coulter, Fuller\*(S), Mannor\*, Messina\*, Payne\*(P-E), Peterman, Schimke\*(T), Smith\*, Tennis.

By phone: Ard, Buhl, Caswell\*, Hentkowski\*, Kerr\*, Mall, Manela, Mestelle\*, Quardokus\*, Shoup, Sprague\*, Steward\*, Swagman,\* Sturgul, Vauter

(P)-President

(P-E)-President-elect

(S)-Secretary

(T)-Treasurer

\* voting member of the council

**\*Matter 1.3 Approval of Agenda**

Todd Tennis asked that the renewal of the Capital Services contract be added to the agenda.

Motion to approve made by Robert Mannor. Seconded by Jane Bassett. Approved unanimously.

**\*Matter 1.4 Approval of Minutes November Meeting**

Motion for approval of November 2014 minutes by Sara Schimke. Seconded by Jane Bassett. Motion passed unanimously.

**Matter 1.5 2015 Spring Conference Report-Manela**

Harley Manela reported that Michele Fuller secured Judge Marlinga as a panelist. Fuller also agreed to serve on the panel. Theme will be Insider's View. Speakers as follows: Michael Lebenbom will speak about nursing home perspective. Doctor's group from provider's prospective. Chris Smith will follow up to secure a speaker from MPRO.

Scholarships are informal. Wants to put in registration that if you are from legal aid the conference is free, just pay for lunch. He is keeping the pricing the same as last year. Cost of lunch might go up.

Katie Graham's request, via Maria Messina: wants to distribute information for No Excuse for Elder Abuse campaign. After discussion, council determined it was within

conference Chair's discretion. Manela stated that it would be okay to distribute the information.

### **Matter 1.6 Treasurer's Report – Sara Schimke**

No report this month due to end of fiscal year. Anticipate a double report next meeting.

### **Matter 2.0 Legislative Report-Todd Tennis**

ELDR issues are being pushed until next year-Kevin Cotter elected speaker of the house-digital assets pushed until January-

Bill regarding DHS workers having arrest authority passed Senate. Bill will probably die but be reintroduced next year. Discussed new legislative leadership.

Pooled trust bill not happening this year. Rep Heise will reintroduce it next year.

Discussed SB 1102-goal to make it harder to appoint a guardian from another state if they have been found to have committed abuse or exploitation. Jim Steward sent comments to the council. Sen Jones, bill sponsor, may be amenable to our suggestions. After discussion council decided to take no action at this time since it will likely be reintroduced.

### **Matter 3.0 Old Business**

#### **\*Matter 3.1 SBO Trust Litigation-Sanford Mall**

Court of claims issued summary disposition for the State. There are limited time and finances to pursue an appeal. Should not be allowed to stand. Reasoning of opinion states admin agency can change policy even if it doesn't comport with the law, which renders it unreviewable by judiciary and legislature has no oversight. Kerr sent Perez case-scotus-regarding paralyzed veterans: when an agency changes interpretation of policy it is the same as changing policy and the agency is required to give notice. Our case not precedent, but still bad. Sends a dangerous message to the agencies.

\* David Kerr-Motion for submission of a Motion for reconsideration. Gives us time to prepare an appeal. No second on motion. Motion fails.

Amy Peterman offered to help with appeal. Underlying research.

Mall asked for help from Smith and Kerr.

\* Motion by Robert Mannor that the litigation committee consider an option to file a motion for reconsideration.

Discussion-Steward-only file if you need to develop claim further. Mall-would help us put it on all fours. Peterman-don't reargue same issues, palpable error-trial court mislead. Must argue something different that was missed. Kerr-sep of powers argument development

Second by David Sprague

VOTE-passed unanimously

Federal substantive question-who has it right. Us or the state.

Rene Reixach said our chances on federal substantive issue was excellent. Rene agreed for initial to 10k. retainer sent to Pat Bond.

\* Motion by David Kerr, seconded by Jane Bassett: Motion to allow Bond to execute retainer agreement and pay retainer fee to Rene Reixach. Passed unanimously.

## **Matter 4.0 New Business**

### **Matter 4.1 Charlotte Shoup-home of modest value exception for estate recovery**

Shoup: obtained court opinion November 4<sup>th</sup>. Upheld home of modest value exception. Court of appeals hearing it. She won in probate, MDCH is appealing decision. Waiting for MDCH to file a brief. She lost at ALJ level, won in circuit-home of modest value. Appeal court waiting to see if granting leave. She has two cases pending. David Shaltz is helping her. State said it is an issue of first impression. Mall-the section should write an amicus brief.

### **Matter 4.2 State Bar Brochures-Josh Ard**

Josh Ard: the State Bar brochures regarding elder law and Medicaid issues are out of date. He is the final approval person for the Bar. Would we agree to be responsible for updating the Medicaid brochure. Kerr updated it and submitted it for review by members of the council. Ard requested that the section agree to take on the responsibility of updating it in the future. The information needs to be on the general Bar page so people can find it. Council decided that the matter should be properly assigned to a committee to update the information as needed. Assigned to the newsletter committee.

\*Motion by Chris Smith responsibility for updating the State Bar brochures for Medicaid and elder law issues shall be the charge of the Chair of the newsletter committee. Seconded by Robert Mannor. Current chair is Jane Bassett. Motion passed unanimously.

### **Matter 4.3 Capital Services Contract**

ELDR Section had a two year contract with Capital Services for lobbying efforts which expires December 2014. Todd Tennis explained that the proposed contract terms remain the same then excused himself from the meeting. Council discussed the role of Capital Services in providing information and their excellent record of assistance with the SBO trust litigation and pooled trust legislation. Request was made by David Kerr that Todd include in his report to the council a brief statement of their efforts on behalf of the section that may not be reflected in their written legislative report.

\*Motion to renew the contract by Jane Bassett, seconded by Maria Messina. Passed unanimously.

## **Matter 5.0 Committee Reports**

### **Matter 5.1 Fall Conference 2015-David Sprague**

Sprague reported that he signed the contract with Boyne Mountain. The location will not be available in 2016. Suggested that we begin securing the 2016 location.

### **Matter 5.2 Newsletter-Jane Bassett**

Bassett requested articles such as where we are now with SBO litigation status. Hot topics. Fuller to do an article on ABLE act and protection for disabled children for vets status. January 25<sup>th</sup> is the deadline. Mall will do a summary on SBO litigation. Bob Mannor to submit a summary of Anderson's NAELA MI chapter webinar on uncapping. Charlene Tope to be requested to provide a summary of administrative changes in Wayne County Probate Court.

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### **Matter 6.0 Adjourn**

Motion to adjourn by Jane Bassett. Second Sara Schimke. Meeting adjourned 11:57 a.m.

Next meeting: February 7, 2015. Patrick Bond's office. 400 Maple Park Road, Suite 402, St. Clair Shores, 586-447-3717