

ELDRS Minutes
December 5, 2015
Grand Rapids, MI
(Office of Caroline Dellenbusch, PLC)

Attendance

Present

Dan Blauw, Christine Caswell*, Caroline Dellenbusch, Jean Doss (Capitol Services), Jill Goodell*, David Kerr*, Michael Mestelle*, Nick Ryan, Christopher Smith*, Beth Swagman*, Todd Tennis (Capitol Services).

On Telephone

Robert Anderson, Jane Bassett*, Pat Bond*, Kim Browning, Howard Collens*, Michele Fuller*, Darling Garcia, Raymond Harris, Angela Hentkowski*, Patricia Kefalas-Dudek, Dan Kosmowski, Harley Manela*, Robert Manor*, Julie McCowen, Maria Messina*, Jules Olsman, John Payne*, Amy Peterman, Kelly Quardokus*, Jackie Rygiel-Sprague*, Charlotte Shoup, David Sprague*, , Jim Steward*, Paul Sturjel, Brad Vauter, Erma Yarbrough-Thomas*.

Indicates ELDRS Council member.

Motion to Approve Agenda. John Payne asked for a Motion to Approve the Agenda. Howard Collens made the motion, which was seconded by Pat Bond. The Motion passed unanimously.

Motion to Approve Minutes. John Payne then asked for a Motion to Approve Minutes. David Kerr made the motion, which was seconded by Michael Mestelle. The Motion passed unanimously.

Treasurer's Report. Christopher Smith indicated that there were no updated financials because of the State Bar sill finishing year end. However, once those reports are issued, Christopher will send out a proposed budget that will be discussed at the next meeting.

Spring Conference. Harley Manela was present to discuss the Spring Conference, which will be held on March 4, 2016, at the Inn at St. John in Plymouth. Harley asked for input regarding various speakers.

There was significant discussion about the pricing for the Spring Conference. In the past, the price has been \$135 for non-members, \$100 for section members, and legal aid was free except for lunch. The Council discussed whether the Spring Conference might be an opportunity to increase revenue. Currently average attendance is about 110 with about 85 attendees paying full price. There was also some discussion about whether we could add a "VIP" option to increase revenue. A final decision

was tabled pending budget review. However, it was acknowledged that Harley could make the final decision if timing required him to do so.

Section Dues. There was also some discussion whether to raise Section Dues, which are currently at \$35 a year. The section currently has approximately 1,000 paid members. Christopher Smith will contact State Bar to determine when decisions regarding the price for section dues have to be made.

Property Tax Legislation. The section discussed a number of issues related to current legislation pending in the Michigan legislature regarding property tax uncapping. Jim Steward and Robert Anderson have taken the lead on this issue on the Section's behalf. The biggest concerns arising from the proposed legislation include: (1) the legislation does not sufficiently deal with the termination of a life estate; (2) the legislation is more restrictive than current law regarding the transfer of LLC interests; and (3) the law unnecessarily redefines when property is considered being used for a "commercial purpose."

Jim Steward indicated that current draft legislation that he has would address these issues. Jim also indicated that the Probate Section expressed similar concerns and has also supported proposed revisions to the legislation.

The Council then voted on three matters:

Motion: The ELDRS Council endorses the proposed changes to HB 4930 as proposed to Council by Jim Steward and support any technical changes that may need to be made.

The Motion was made by Jim Steward and seconded by David Kerr. The motion was approved by a unanimous voice vote.

Motion: The ELDRS Council opposes HB 4930 because it does not represent a coordinated approach to the amendments of that subsection, does not deal with life estate termination issue, and does not coordinate the 'no commercial purpose' language with MCL 211.34(c). The Council further supports the proposed substitute language for HB 4930 as presented by Jim Steward.

The Motion was made by Jim Steward and seconded by David Kerr.

The Motion passed with 17 members present at the time of the vote. There were 16 ayes and 0 nays. The Chair abstained.

Motion: The ELDRS Council opposes HB 4645.

The Motion was made by Jim Steward and seconded by David Kerr.

The Motion passed with 19 members present at the time of the vote. There were 18 ayes and 0 nays. The Chair abstained.

Legislative Report. In addition to the participating in the property tax legislation discussion above, Todd Tennis and Jean Doss provide Council with an update on other legislative matter:

- The House passed HB 5034 (the digital assets bill) unanimously. The legislation was referred to the Senate Judiciary Committee. The Judiciary Committee has a large number of bills pending, so it is unclear whether they will take the bill up early this year or next year. There is no significant opposition expected. Howard Collens concurred with Todd's report and indicated he plans to continue to attend hearings on the Section's behalf.
- DHHS Inspector General Bill (SB 384 and SB 385). The House Criminal Justice Committee heard testimony on legislation that would allow DHHS's inspector general to have firearms and certain arrest powers. Todd reported that the Committee expressed a lot of skepticism and it is unclear whether these bill will resurface for a vote.
- CARE Act (SB 352). Todd indicated that this bill has been reported out of the Senate Health Policy Committee. The bill allows hospital patients to designate a caregiver and would require the hospital to give certain information and training to that individual. There remains some opposition to a provision in the bill that waives hospital liability in certain instances if the caregiver provides improper care.
- HICA Tax. The legislature is considering legislation that would extend this tax (which helps pay for certain general fund Medicaid expenditures) until 2025.
- Jean Doss reported on a hearing on a proposal that would allow certain medically frail prisoners who have served their minimum sentences to be released to a nursing home. Everyone is being very cautious regarding these bills at this time and any legislation will not be moving fast.
- Todd indicated that the Long-Term Care Insurance Partnership passed into law this month.
- Finally, Todd reported that Senate Bill 270 was just introduced. This legislation would make changes to EPIC regarding conservatorships and guardianships and contains language provided by the Judge's Association to address some of the concerns they had regarding UAGPPJA.

Vulnerable Adult Jury Instructions. Jules Olsman reported that the Public Policy Committee of the State Bar was made aware of a proposed jury instruction regarding the definition of a vulnerable adult that would make it very difficult to prove that definition. Jules indicated that the Supreme Court is requesting comments on the proposed rules by January 1st and Jules offered to write a letter on the Section's behalf. The Section indicated that they would consider sending the letter upon review and an electronic vote. Jules indicated he would send the draft letter to John Payne.

Ketchum Estate Amicus. Amy Peterman indicated that the Court of Appeals granted the motion to file an amicus brief, but our request to file a reply brief was denied and sent back. Also, our request for oral argument was denied without prejudice and we could request again once argument was set.

Roush Estate Amicus. Jim Steward indicated that the Section's amicus brief in this matter will be filed next week.

Advisory Letter to Nursing Homes. Brad Vauter and Kelly Quardokus were going to initially take the lead on the potential content for a webinar to nursing homes.

MI-POST. Caroline Dellenbusch indicated that there is draft legislation that there is draft legislation that will be proposed. Right to Life and the hospitals are taking the lead with lawyers generally being kept of the process. Caroline will send out a draft bill when she gets it.

Change in Technology. Christopher Smith indicated that the Section will likely experiment with GoToMeeting/GoToWebinar for its next Council meeting.

Unauthorized Practice of Law. Robert Anderson indicated that there is no traction to go after trust mills in the state. However, the UPL Committee did authorize the "Who Do You Trust" seminars again and Section members might be interested in doing these presentations.

Congressional Legislation. Patti Dudek indicated that Representative Fred Upton (southwest Michigan) is a significant figure in current federal legislation impacting Medicaid. She would like Section members to meet with him and will contact Council regarding the plan to do this.

Change to BEMs. Christopher Smith encourage Section members to review changes to the BEMs that will become effective on January 1st.

Christine Caswell made a motion to adjourn the meeting. David Kerr seconded the motion.

Next meeting: January 9, 2015, at Patrick Bond's office in St. Clair Shores