

**ELDER LAW AND DISABILITY RIGHTS SECTION  
COUNCIL MEETING  
STATE BAR OF MICHIGAN**

**February 3, 2007**

**The Mall Malisow Firm, PC**

**COUNCIL MEMBERS PRESENT:**, Priscilla Cheever, Dolores Coulter\*, Caroline Dellenbusch, Patti Dudek, Tom Hartwig, Konrad Hittner\*, Art Malisow\*, Sandy Mall, Harley Manela\*, John Payne, Don Rosenberg, Paul Sturgul\*, Amy Tripp, Brad Vauter\*, Judge Nelson excused.

**SECTION MEMBERS PRESENT:** Josh Ard\*, Kristina Barsch, Rosemary Buhl, Katy Graham\*, Bret Howell\*, Yvonne Paramore, Susan Wideman\*

**ALSO PRESENT:** Jeanne Murphy, Todd Tennis

\*Participated Via Conference Call

The meeting was called to order by Chair, Sandy Mall.

**1. Introductions**

The members introduced themselves.

**2. Approval of Minutes**

The minutes of the January 6, 2007 were approved.

**3. Treasurer's Report**

As of December 31, 2006 the ending balance was \$70,966.77. Money is still owed to Mission Pointe Resort. Brad Geller is working out discrepancies regarding the final bill. The Treasurer's report was accepted as presented.

**4. Old Business**

**A. Spring, 2007 Conference Status Report**

Harley reported that notice will be sent both by mail and electronic form this week and that registration could be done on-line through the State Bar of Michigan. Sandy reported that John Payne's sister requested to reserve a vendor's table for the Spring Conference. John's sister owns and operates Elder's Advice Network which provides referrals to Care

Managers. In addition, she is also licensed to sell annuities and insurance products. There was wide discussion regarding the different types of vendors that should or should not be allowed to participate at the Spring Conference. There was concern that it would appear that the Elder Law Section is endorsing these particular vendors or practices. Motion was made by Priscilla Cheever and seconded by Patty Dudek not to include annuity salespersons as vendors for the 2007 Spring Conference. After discussion a vote was called. The motion carried with one opposition. Priscilla suggested that the Council develop policy or guidelines regarding vendors for future conferences in order to try to avoid controversy.

**B. Fall, 2007 Conference**

No report.

**C. Status of DHS Meeting Regarding DRA Rule Changes – Scope of Issues to Discuss**

Don reported that he posted a list of potential topics for the upcoming meeting and received only two comments from the Listserve. After further discussion the list of topics to be discussed at the DHS meeting includes the following:

1. Treatment of retroactive funeral plans
2. New PEM re: income producing property.
3. Recent interpretation of existing regulations pertaining to name on check and assignment for the community spouse. Specifically, when an ill spouse annuitizes an IRA/401K for the "sole benefit of" the Community Spouse the income has always been budgeted in the Community Spouse's name. Now this income is being budgeted in the ill spouse's name.
4. How DRA will be implemented as it applies to home equity, , lookback, promissory notes, hardship, etc...?
5. Issues of due process and uniformity of offices interpretation of the PEM's
6. When will be the effective date and will it be prospective and not retroactive as we have been previously advised?
7. What effect will DRA have on the annual recertification?
8. Will there be provisions to address minimal gifts and gifts to charities?

Paul Sturgul suggested discussing the role of the examiners and why the State feels that they are necessary. The meeting is thought to be scheduled for late February or early March.

Council members also commented on all the inconsistency with the case workers throughout the state. Sandy suggested that we assist each other, along with others, in how to litigate these issues so that we can stop all of the inconsistent and bad practices. This introduced a discussion regarding the possibility of a litigation section of the Council.

Paul Sturgul commented about the Coalition of Wisconsin Aging Groups and their practices. Patty was going to look into that Website and report back to the Council. Patty also commented regarding the litigation SIG of NAELA regarding the formation of a brief bank by the litigation SIG of NAELA. Don suggested that we all continue to share and post our war stories.

## **5. New Business**

### **A. Council Priorities.**

Sandy led the discussion regarding the Section's position on estate recovery and estate preservation. It was stated that while the Section would prefer neither, estate preservation is the better of the two options. The Section will remain opposed to estate recovery. Any rule is bad but we could live with estate preservation. Katie indicated that the Area Agencies on Aging were having a legislative forum and suggested that the Section contact Mary Ablan to discuss the Section's position on estate recovery/estate preservation. Dolores commented that she felt that the AAA's were so focused on waiver issues that this may not be a priority issue for the AAA's. Patty suggested that the Section continue to look at waiver services. Further, it should be out number one priority to advocate for the opening of community options. The Section will continue to accept estate preservation only if it is to be mandatory and the money be provided to the Medicaid budget and/or increase waiver services. Patty suggested that there be language referring to the Match Program. Sandy requested that Dolores re-circulate the draft letter.

The implementation of DRA also continues to be a very important topic. Priscilla, along with Sandy, agreed that the expansion of the Waiver Program should be at the top of the priority list. It should be equal if not a greater priority.

Other important issues include the UTC, the Uniform Power of Attorney Committee, the Transfer on Death Ladybird Committee, and the Unauthorized Practice of Law Committee. It was noted that Section members participate and are present on all of these committees.

Another priority that the Section should consider is making sure that there is due process in every forum of the Medicaid process. Sandy indicated that of the discussed topics, expansion of the waiver, estate recovery/estate preservation and DRA changes were the top priorities along with a host of other topics that the Section will continue to monitor and be aware of.

### **B. Capitol Services Role**

Dolores suggested that the Council consider expanding the role of Capitol Services to include lobbying. After brief discussion Sandy

requested that this matter be placed on the list for further discussion and included on next month's agenda.

**C. Updated Meeting Schedule**

Two meetings have been rescheduled. The May 5, 2007 meeting will occur on the second Saturday which is May 12, 2007 and the September 1, 2007 meeting will be rescheduled to the second Saturday which is September 8, 2007.

**D. Letter to Paul Rinehart**

Priscilla suggested that the Council write a letter to Paul Rinehart regarding mandatory dual certification for the Medicare beds. After brief discussion motion was made by Caroline and seconded by John for the Council to draft a letter mandating dual certification of Medicare beds. There was some discussion regarding what additional persons or agencies the letter would go to. Sandy indicated that the scope of who receives the letter could be continued on the Listserve after the letter is prepared and a draft is circulated. Motion carried unanimously.

**E.** Sandy announced that the Section would be reviving an electronic version of the Newsletter. If anyone has any articles please get them to Sandy.

**6. Legislative Update**

See Capitol Services report that was posted and distributed at the meeting. Todd reported on the budget crisis. It is as dire as he has ever seen. "They have already raided every piggy bank and tried every accounting trickery available. If there are no tax increases the level of budget cuts will be devastating." Todd commented about the Uniform Power of Attorney Act. However, the staff is expecting a substitute bill to follow shortly. Josh commented further that there are a lot of issues. One main issue is to get banks to accept Powers of Attorney. Further, a goal of the Committee is to provide protection to people who don't go to good qualified attorneys. Todd announced that Representative Kathy Angerer, Chair of the Health Policy Committee and Representative Marc Corriveau have agreed to be the speakers at the lunch for the Spring Conference.

The next meeting is scheduled for March 3, 2007 at the State Bar Building. There being no other business the meeting was adjourned.

Minutes Respectfully Submitted by:

Amy R. Tripp  
Secretary

