

ELDER LAW AND DISABILITY RIGHTS SECTION COUNCIL MEETING MINUTES

10 a.m. to Noon Feb. 5, 2011

Offices of Barron, Rosenberg,
Mayoras & Mayoras P.C
1301 West Long Lake Rd
Suite 340
Troy, Michigan 48098

Present: Dellenbusch, Malisow, Holmes, Bond, Cheever, Rosenberg, Coulter, Payne, Anderson, Ard, Fuller, Mall, Buhl, Kerr, Hittner, Arenz, Goodell, Manela, Tripp, Schimke, Vauter, Swagman, Murphy, Champagne, Wideman, Lucias.

Guests: Tennis, Hoekstra

1. Introductions
2. Secretary Bradley Vauter offered an apology for missing names of attendance in the draft minutes, but they were approved as presented with the idea names could be added later.
3. Treasurer Rosemary Buhl presented the reports prepared by staff at the State Bar of Michigan. There was some discussion about the manner in which the state bar staff prepares the reports, and the labeling of the reports—ie are they true general ledgers or income and balance sheets only, or some combination? Buhl said the section's finances were in good shape, and that our present balance is approximately \$78,000. The reports were accepted.
4. Old Business
 1. Members of the Nomination Committee discussed a council vacancy resulting from the resignation of Diane Kuhn Huff. They suggested that, at present, we let the vacancy stand, for the time being, and consider extending an invitation later on, if need be. Those interested are invited to attend future meetings of the council.
 2. Spring Conference - Harley Manela reported that the Spring Conference is proceeding nicely, and registrations are coming in. He expects approximately 110 or so. No particular theme is set for the conference but a variety of issues and topics will be covered to include something new, common problems, and legislative and policy issues. Materials this time around will probably not be loaded on to a flash drive, but that may be considered in the future. A brief discussion ensued about various cost options in the future—cutting down on beverages, or changing the location, and other ideas were discussed as possibilities for a future

conference. Right now though the current formula seems to be working well, many thought.

3. Nursing Home Model Contract –No report.
4. Section Newsletter - John Payne indicated this is temporarily on hold, and the council chair and the committee will be trying to meet in the coming weeks. Bob Anderson said once it is up and running he'd contribute a recent article, or modified article, on tax issues and changes, similar to the article he is providing for NAELA.
5. Social Security Disability - Mental Impairment Definition – Comments on this proposed regulation were submitted.

5. Committee Reports

1. POLST Committee - Bob Anderson reported that a Michigan form has finally been approved which seems to incorporate state and national needs and includes Michigan's patient advocate and d.n.r. laws. He proposed that the section and others endorse the form and encouraged distribution of the form to important focus groups and interested parties for more discussion and refinement. Others reported that the probate section of the state bar will explore this issue too, particularly working on the law and issues surrounding the ability, or inability, of a guardian signing a d.n.r. order. Those present also suggested the Michigan Guardianship Association should work on the project too. The hospital association has agreed to pony up some money for a print run of the forms, but even so, the section's seed money, for this project (\$500.00) has been exhausted. He asked the council to consider making more money available for future printings. Rosenberg moved (and Fuller supported) that the elder law and disability rights section of the state bar provide \$250.00 more for the POLST group. The motion passed.
2. Litigation Committee - Sandy Mall updated the group on the litigation against the state and the manner in which they handled medical expense payments for those applying for or on Medicaid. An order is in draft form, based on the settlement reached by the attorneys involved. The state Medicaid plan and the B.E.M's should also be amended to reflect the settlement and should thus more closely follow federal law and regulation. Some issues are still to be determined including specific handling claims of the class, and nailing down the retroactive application date (probably for applications filed on or after January 2009).
3. Health Care Reform Committee – No report.
4. Legislative Committee - Brad Vauter reported suggestions in circulation over the past few months seemed to converge on six possible key ideas including: expansion of Medicaid coverage; stopping deceptive marketing practices—particularly groups using “veteran's or veteran” as part of a sales pitch; assuring pooled trusts could be used by those 65 or older on or applying for Medicaid; expansion of the Adult Protective Services (APS) staffing or services throughout the state; adding financial institutions to the list of mandatory reporters under statute; and tightening annuity sales requirements. Discussion ensued and it was decided that the council would focus this year on 1) strengthening the APS cadre, 2) fighting deceptive marketing practices that use veteran or veteran's organization

names in order to sell coins and etc., and 3) asserting the rights of (otherwise) Medicaid eligible persons over 65 to use pooled trusts. Bond and others also suggested that sending letters to facilities and the state might help bring to light the bad practices of those selling gold coins to the vulnerable and suggesting such spending is advisable under various government benefit programs.

6. New Business

1. BEM 401 Pooled Trusts – Fuller reported that the proposed revision of BEM 401 could be a problem, and at present, the language in the BEM, if it takes effect April 1, confuses the policies even more than at present. The proposed BEM will eliminate pooled trusts for those over 65 years of age. Others noted that even with the present policies in place, some of the applications with pooled trusts seem to get approved, and others do not. Discussion ensued about legislative approaches or fixes, continued administrative law challenges, and pitches with legislators or department officials to simply revise the BEM or put a stay on its execution. Several volunteered to meet with new state representative Kevin Cotter, who is a member of the section and practiced elder law in Mt. Pleasant. Hoekstra agreed to set up a meeting to discuss the issue further. Meanwhile those using the courts or administrative tribunals are encouraged to report their successes or failures to the others.
2. BEM 400 Jointly Owned Real Property—Buhl noted that language proposed for this BEM was also a problem and could also take effect April 1, if there is no change beforehand. Property held jointly between applicants and others will almost always present a problem now unless the joint owner refuses to sell, lives on the property and claims they can't find another place to live. The state seems to suggest their policy is grounded in 42 USC 1382 but several thought this is a case of the state becoming more and more restrictive. Payne suggested this too might be a reason to meet with the head of DHS, and he and others suggested that maybe even a request for a TRO could be made if the department implements this policy.

7. Legislative Update: Capitol Services presented and highlighted the legislative report. Mention was made that work on the veteran's (deceptive sales tactic issue) might find ready sponsors, but that any legislation or suggested legislation would benefit from language we come up with, and Ard, Bond, Shimke and Vauter offered to help tackle this. Vulnerable adult legislation from previous sessions has been reintroduced, they noted. In keeping an eye on issues, some suggested we should also puzzle out a better way to approach unauthorized practice of law (UPL) issues.

The next meeting of the section will be March 5, 2011, from 10 am to noon at the Inn at St. Johns, in Plymouth, MI (the day following the spring conference).

. Submitted by Brad Vauter, secretary.