

Elder Law and Disability Rights Section Meeting minutes

February 4, 2012, Office of Barron, Rosenberg, Mayoras & Mayoras PC

Present in person: Dolores Coulter, Ellen Hoekstra (Capitol Services), Todd Tennis (Capitol Services), John Payne*, Sara Schimke*, Caroline Dellenbusch*, Rosemary Buhl*, Don Rosenberg, Christopher Smith*, Michele Fuller*, Patrick Bond*, Rachel Zapczynski, Jules Olsman

Present via telephone: Bob Anderson, Sandy Mall, Kelly Quardokus*, Harley Manela*, Angela Swanberg, Art Malisow*, Paul Sturgul*, Jim Steward*, Beth Swagman*, Jill Goodell*, J. David Kerr*, Brad Vauter*, Michael Mestelle*, David Sprague, Christopher Berry, Christine Caswell

*Indicates voting council members.

1. Meeting began at 10:00 am. Introductions were made for those present, and via telephone.
2. Minutes:
 - a. The approval of the January minutes was tabled until the March meeting.
3. The Treasurer's report was provided by the Section Treasurer.
 - a. Discussion was held regarding the status of the payments to Michael and Myra Gilflix for their involvement in the fall 2011 conference (including airfare and other expenses. Mr. Gilflix, the named guest speaker at the fall 2011 ELDRS conference had asked if his wife, Myra's expenses (\$390.80) could also be covered. After discussion, two motions were made: 1) Patrick Bond moved to pay Michael Gilflix's expenses of \$1697. Passed unanimously. 2) John Payne made a motion to approve the payment of \$390.80 for the expenses of Myra Gilflix. Motion was seconded by Michael Mestelle. Motion passed with the following in support: Kelly Quardokus, Paul Sturgul, Art Malisow, Jim Steward, Harley Manela, Jill Goodell, Beth Swagman, Patrick Bond, Rosemary Buhl, Michele Fuller, Chris Smith, and Sara Schimke. The following council members opposed: J. David Kerr and Brad Vauter.
 - b. Discussion was also held about the State Bar credit card policy, but it was decided that it will not affect the ELDR Section, due to the process we use for registration.
4. Legislative Update (For complete analysis of the legislation, and other activity reported on, please see February 2012 Legislative Report prepared by Capitol Services)
 - a. Pooled Accounts Trusts—Michelle and Sandy prepare a draft and gave it to Representative Cotter, who has agreed to sponsor the bill.

- b. DPOA legislation SB 92—has passed the senate; there will be a hearing in the house. Discussion held about the concerns about the Bill, such as commingling, POD/TOD issues, etc. Jim Steward, (also a member of the Probate Council) provided a memo to the council summarizing the problems with the bill and stated that the Probate Council suggested that provisions E & F be deleted and replaced with the following “ *(E) UNLESS PROVIDED FOR IN THE DURABLE POWER OF ATTORNEY, THE ATTORNEY-IN-FACT SHALL NOT CREATE AN "IN TRUST FOR", ALSO KNOWN AS PAYABLE-ON-DEATH, ACCOUNT, OR MAKE, CHANGE, OR DELETE A TRANSFER-ON-DEATH OR PAYABLE-ON-DEATH DESIGNATION CONCERNING THE PRINCIPAL'S ASSETS, IF THE ACTION WOULD ALTER THE PAYABLE-ON- DEATH DESIGNATION.*”
 - i. J. David Kerr made a motion that the Council support the Probate Council Committee’s recommended version of the Bill. Seconded by Paul Sturgul. Vote was held and passed unanimously. (Harley Manela was not present).
 - ii. The council also discussed the use of Acknowledgment vs. Acceptance by the agent. Motion was made by Jim Steward to change paragraph (3) of said bill to replace ‘acceptance’ with ‘acknowledgment’. Seconded by Michael Mestelle. Motion passed with the following in support: Kelly Quardokus, Paul Sturgul, Art Malisow, Michele Fuller, Chris Smith, Sara Schimke, John Payne, and Rosemary Buhl. Those who voted in opposition: Brad Vauter, J. David Kerr, Jill Goodell, Beth Swagman, and Patrick Bond. (Harley Manela was not present)
 - c. Health Care Exchange: still not moving
 - d. Uniform Arbitration: Moving fast. Jules Olsman (the ELDRS State Bar Board of Commissioners Liaison) spoke out against this bill. Discussion was held. Motion was made by John Payne to condemn SB 901,902 and 903 as a violation of due process and an attempt to undermine the rights of Seniors and People with disabilities as it allows contracts of adhesion. Motion was seconded by Patrick Bond. Vote held, passed unanimously (Harley Manela was not present).
 - e. Dual Eligibles—discussion about new language from DHC
 - f. Autism & Parity—Council is included in the Partners for Parity (wanting all mental illnesses to be covered not just autism). Moving fast.
 - g. Vulnerable Adult Bills—some are going to hearing. Continuing to move forward.
 - h. DCH Recipient Rights Rules—proposed amended to the DCH Recipient Rights Rules to address the use of psychoactive drugs and the approval of the use.
5. Old Business
- a. Spring Conference 2012— (discussion moved up on agenda to accommodate Harley Manela—coordinator)

- i. Harley Manela stated that the conference is scheduled for Friday March 16, 2012 at the Inn at Saint John's in Plymouth. The plan is to have the March Section meeting held the following day. (March 17, 2012).
 - ii. Registrants will receive the materials on paper and on a flash drive. It may be different next year (having a higher fee to receive a hard copy).
 - iii. E-blasts have gone out, it is also being sent to the Probate Section and the Health Law Section.
 - b. Fall Conference –discussion was held about the scholarship criteria. Issues such as reduced fees , scholarships and application discussed. Tabled until committee reviews application sent out.
 - c. BEM 405 Pooled Trusts—Sandy Mall/Michele Fuller—See Litigation Committee Report
 - d. Estate Recovery FOIA—no update. Tabled until March meeting.
 - e. By-law Changes—conversation tabled until March meeting.
 - f. Litigation Retainer agreement—tabled until March meeting.
- 6. New Business
 - a. Misrepresentation by Sellers of LTC insurance: -- Bob Anderson, table until March Meeting.
 - b. Collaboration with Health Care Section—tabled until March Meeting.
 - c. Collaboration with ADR Section—tabled until March Meeting.
- 7. Committee Reports
 - a. POLST—tabled until March
 - b. Litigation Committee—Sandy Mall
 - i. Pooled Account Trust –expecting an answer from the State this month, added two more plaintiffs.
 - ii. IRA/401k—will be filing complaint this month. Have an ideal plaintiff.
 - iii. Dual Certification of Beds—still looking for plaintiffs.
 - iv. Estate Recovery litigation—Sandy to talk to Bob Anderson
 - v. Standard of Promptness—no report.
 - c. Health Care Reform Committee—Dolores—no report
 - d. Legislative Committee—Brad V. tabled
 - e. Newsletter—John Payne –need council emails to make sure all are getting drafts.
 - f. Fall Conference Committee—see old business
- 8. Announcements—Chair Caroline Dellenbusch asked that all committee chairs prepare written reports to be handed out prior to next meeting.
- 9. Upcoming meetings:

- a. March meeting will be held on **Saturday March 17th** (Day following the Spring conference) at the Inn at Saint Johns, in the Wisdom Room.
 - b. April 7, 2012 meeting at Chalgian & Tripp Law Offices, East Lansing.
10. Motion made by Paul Sturgul to Adjourn, seconded by John Payne. Passed unanimously.

Meeting ended at 12:20pm

Respectfully submitted by Rosemary H. Buhl