

Elder Law and Disability Rights Section
Minutes of February 6, 2016 section meeting
Motion by Jill Goodell to approve agenda; Seconded by Beth Swagman

Matter One

Matter 1.1 Location

Meeting held at Chalgian & Tripp, East Lansing.
Meeting called to order at 10:02 a.m. by Chair

Matter 1.2 Attendance

Those present in-person:

John Payne* (chair), Sara Schimke* (secretary), Christopher Smith* (treasurer), Christine Caswell*, Maria Messina*, Jill Goodell*, J. David Kerr*, Kelly Quardokus*, Jacquelyn Rygiel Sprague*, Beth Swagman*, Charlotte Shoup, Doug Chaligan, Darling Garcia, Todd Tennis, Jean Doss.

On the phone:

Patrick Bond* (past chair), Michele Fuller* (Chair-Elect), Jane Bassett*, Howard Collens*, Angela Hentkowski*, Robert D. Mannor*, Michael Mestelle*, David Sprague*, James Steward*, Erma Yarbrough-Thomas*, Paul Sturgul, Don Rosenberg, Amy Peterman.

(* designates council member)

Matter 1.3 Approval of Minutes

Motion to approve January 2016 meeting minutes made by Maria Messina; seconded by Beth Swagman. Motion passed unanimously.

Matter 1.4 Treasurer report

Chris Smith made report, budget was previously approved. New financials will be sent out when they come in next week.

Matter 1.6 Legislative update - Todd Tennis

- A. Flint Water system issues are dominating Lansing right now along with Detroit Public School issues. This has delayed the budget determinations.
- B. Digital Assets Bill (HB 5034) - scheduled for hearing in Senate Judiciary committee. Howard Collens will be present to describe the bill; Representative Forlini requested Howard's presence to co-present the Bill with him. It is expected that the Bill will be reported out of the committee next week. There are some small amendments being requested from the motion picture industry regarding copyright.
- C. \$2million has been requested from the budget for advance dementia services. This request has made it into the governor's budget proposal. Expect to know more on Monday. Budget presentation will be Feb 10, 2016.
- D. Designated caregiver act (SB 352 - passed Senate unanimously. House will now have a committee hearing on it. The only concern currently raised with the Act are concerns with Michigan's No-Fault Act and the responsibility of insurers.

- E. Real estate transfer act (HB 4930) was signed into law on December 22, 2015 - Senator Casperson now introducing three new bills, SB 648, 649, and 650 that will be a broader change. Todd will keep us updated on this issue as it progresses.
- F. Group currently working on updates to the states dementia plan would like to work with ELDRS for this coalition.
- G. SB 551 - Jim Steward would like to discuss this at the next meeting and believes that ELDRS should take a public policy position on this in the future. Todd will add these to the list of bills he is watching. The bill is coming up March 1 in the House judiciary committee. The bill amends EPIC and revises the order of priority regarding those who have a right to make funeral decisions. A funeral representative along with a successor can be appointed. The funeral Representative does classify as a fiduciary. The bill includes the authorization for cremation. The bill is approved by the probate section who spent a lot of time on it.
James Steward made a motion to take a public policy position in support of SB 551 S-1, Beth Swagman seconded the motion. Discussion ensued. After discussion concluded, the Chair called the vote. 18 voted yes, no opposed, no abstain.
The Chair did not vote. Motion passes.
- H. SB 597 - Distributions Trust Act. J. David Kerr was contacted by Rob Stow regarding whether this act would help with Medicaid planning. Kerr felt it did not. Stow was questioned about this when he was testifying.
- I. SB 742 - introduced last week. There is a military portion of this Bill that would allow an easier path for attorneys not admitted to practice in Michigan to get admitted. Todd advised that the rationale was limited. Intended for spouses for military personnel. It is essentially a pro-military services bill. Howard Collins believes the bill is much more broad than that. Todd will explore it further and report back to the Counsel.

Matter Two - Old Business

Matter 2.1 Ketchum Estate - John Payne

John Payne reported that Amy filed a brief. Oral argument was on Tuesday regarding the hardship matter. No decision has been rendered yet. Regarding the notice issue: basis of the argument was that no notice was given to people when they applied for Medicaid so the state was not eligible for estate recovery. DHHS was looking for recovery back to 2012 before the practice of providing notices went into place. COA has said that the state cannot recover on Medicaid that was received between Jul 2010 - Jul 1, 2011. This decision was just rendered. The issue that still has not been decided is regarding the house of modest value (50% of homestead) exemption from estate recovery. DHHS argues that the application for the hardship exemption cannot be an estate, it must be the beneficiary of the estate who must qualify for poverty stricken. Therefore the exemption would only apply if it were a poverty case. Dave Shultz argued this matter. Two of the panel members were on the Keys panel so they had prior information. David gave presentation regarding the oral argument. The panel was conservative. Pleadings filed by the AG argued that the hardship presumptions were really not the law. Cited language in Keys. David distinguished Keys and Clark from this case.

Argued that under the facts in Ketchum, the home ended up being less than 50% average home values - and that the means tests for the heirs needing to meet poverty exemptions. This poverty addition was put into the modified state plan, but was never approved by the federal government. The judges seemed to be focused on the fact that the PR sold the homestead before the hardship application.

The COA also ruled on Thursday regarding In Re Estate of Irene Gorney which included the Ketchum case. The Court concluded that the state can go back to July 1, 2011 if the person signed a Medicaid application or redetermination in 2012. Under these circumstances, the state can recover from 2011; the signature is considered a retroactive agreement for recovery from the date of the state plan.

Matter Three - New Matters

Matter 3.1 Agenda and Meeting issues

Many people are not getting the agenda and meeting announcements. Many would like our meeting dates and agendas posted on the Bar website. For convenience of those members who will be attending the Spring Elders Conference, the March council Meeting will be moved to Jane Bassett's office in Ann Arbor. Accordingly, the May council meeting will be held at Robert Mannor's office.

Matter 3.1 Technology - Chris Smith

Under the new phone service provider, the meeting call-in number will change every month. This is the downside to the new technology, but there is a great financial savings for the section under the new service. Everyone should check the posting meeting agenda for that month's call-in number.

Matter 3.1 State Bar Annual conference

Christopher Smith made a motion that the Section participates in the annual State Bar meeting, motioned second by Kelly Quardokus. motion passed unanimously. Sara Schimke will work with Angela Hentkowski to coordinate a speaker and topic.

Matter Four - Announcements

Matter 4.2 Next Meeting

Next meeting will be held on March 5, 2016 at Jane Bassett's office in Ann Arbor.

Matter 4.3 Adjourn

Jill Goodell made a motion to adjourn the meeting; David Sprague seconded the motion. Motion passed unanimously.

General meeting adjourned at 11:38 p.m.

Matter Five - Closed Meeting

A closed meeting was held with Council members, Amy Peterman, Don Rosenberg, and Charlotte Shoup. Meeting adjourned at 12:05 p.m.