

Elder Law and Disability Rights Section
Council Meeting

Mall, Malisow & Cooney, P.C.
30445 Northwestern Hwy
Farmington Hill, MI
248-538-1800

January 3, 2009
10:00 AM-12:00 PM

MINUTES

I. INTRODUCTIONS

Amy Tripp read roll call. Those present were Amy Tripp, Don Rosenburg, Caroline Dellenbusch, Rosemary Buhl, Rachael Holmes, John Payne, David Kerr, Konrad Hittner, Patrick Bond, Roxanne Chang, Art Malisow, Dolores Coulter, Ellen Hoekstra, Priscilla Cheever, Jack Devine, Kevin Cotter, Jim Wilson and Ward Wilson. Those present via telephone were Bob Anderson, Diane Huff, Harley Manela, Brad Vauter and Paul Sturgul.

II. APPROVAL OF MINUTES

Motion passed to approve the December minutes.

III. TREASURER=S REPORT

Caroline presented the treasurer=s report. We now have through November 30, 2008 \$101,984.39. This is a substantial increase from our last report which was \$75,794.44 and is the result of section dues coming in. Discussion regarding what we could do with our money. Present section dues are \$35.00. It was noted that the Spring Conference has become a money maker for the section. Discussion regarding a possible dues Aholiday@ but, we do not know how much money we will need to spend on litigation. Also discussed the possibility of printing pamphlets on Elder Law and Disability issues to provide to our members and/or the public, as some other sections do.

IV. COMMITTEE REPORTS

A. Litigation Committee

John Payne is the Chairperson. Bob Anderson discussed the current focus of the litigation committee. There are 2 issues before the committee:

1. Whether or not qualified retirement funds including IRA=s of the

community spouse should be exempt.

Attorney Sarah Buscher of Appleton, WI, litigated the Keip and has indicated that she might be available as a consultant but not as an attorney of record in any litigation in Michigan to produce the same result that she obtained in Keip, wherein the WI Court of Appeals affirmed the Circuit Court's decision that qualified retirement funds belonging to the non-institutionalized spouse are exempt, as per SSI methodology. Michigan is an SSI state.

2. Application post-eligibility income to pay pre-eligibility medical expenses, including accumulated long term care nursing home bills; i.e. adjusting the individual patient pay amount to pay the past medical expenses. Bob mentioned that he has 2 cases in the Upper Peninsula that he is working on. Bob recommended that litigation committee members and council members read 2 cases on this issue, one from Maryland litigated by Ron Landsman, and another from Montana litigated by Nancy Gibson.

Discussion that we had considered allocating \$25,000 for litigation costs but have not formalized it. Renee Reixach will be contacted again, to see if he would be willing to handle this litigation and an estimate of what his fees would be.

Also discussion that we might be able to get attorney fees upon conclusion of a successful case.

Amy Tripp felt that we could not afford at this time to handle both of these issues at the same time.

John Payne also mentioned additional future issues for the committee-Michigan does not allow partial cures. Paul Sturgul noted that in implementing DRA this January in Wisconsin, Wisconsin is allowing partial cures. John Payne also mentioned the issue of nursing home deposits.

There is a telephone conference scheduled for Friday January 9 at 2 pm est. The calling number will be the same as that for council meetings (800) 270-1153, participant code: 123910.

B. POLST Committee (Physician Orders for Life Sustaining Treatment)

Bob Anderson discussed this issue. Caroline Dellenbusch, Josh Ard and Brad Geller are also on this committee. Bob Anderson and Amy Tripp noted that there is already POLST Directives used in Jackson County. Bob would like this procedure to be implemented throughout the state.

V. OLD BUSINESS

A. 2008 Fall Conference

We may still own something on Homestead.

B. 2009 Spring Conference in Plymouth

Harley discussed the up coming spring conference. Harley has the agenda complete that section numbers received-he only needs to know if Stuart Hakola will be speaking in the presentation segment entitled "What's new for Medicaid in 2009". Bob Anderson said he would contact Stuart and let Harley know, as Harley needs to get the materials to the State Bar this coming week. The luncheon speaker may be Senator Tom George but, we will keep it "To Be Announced" for the time being. Caroline Dellenbusch will moderate a session on using alternative gifting resolutions in the elder law practice with Susan Butterwick and someone else from the alternative gifting resolutions section of the State Bar. Anne Lehmann will give participants a copy of her book.

Discussion regarding conference fee-motion carried that the fee for section members would be \$100 and for non-members \$135.

C. 2009 Fall Conference

The proposed date for the 2009 fall conference is Wednesday September 23, 2009 and ending on Friday September 25, 2009 in the afternoon. Decided that it will be at Crystal Mountain this year. Amy would like to have a national key note speaker has e-mailed an individual to see if he would interested in doing so. Amy suggested that we also e-mail speaker suggestions to her and Brad Geller.

D. Database for ALJ decisions

Brad Vauter is spearheading the effort to have ALJ opinions posted either on the web site for Elder Law of Michigan, Inc or the sections web site. The only issue would be keeping it up to date. Brad requested that members send to Brad's e-mail any ALJ cases. Also suggested broadening the listing to include SSI cases. Brad will work with Keith Morris from Elder Law of Michigan to set up the data base in the event that it would be hosted on Elder Law of Michigan's web site. Brad's e-mail is bvauter@elderslaw.org. Discussion as to whether or not names including parties and attorneys would be listed in the ALJ decision-privacy concerns raised an issue of whether or not the decisions are reductive. Paul suggested to Brad that he contact NAELA member Pete Grosskopf (715) 835-6196 of Eau Claire, WI who set up this data base for the Wisconsin elder law section.

E. Blue Cross Legislation

The Blue Cross Legislation was addressed in the capital services report of Ellen Hoekstra.

F. NCCNR: Request from Alison

At the last meeting the council voted to purchase \$1,000 worth of NCCNR books to be distributed at the spring conference. Apparently these will not be published so, council voted, moved by Don Rosenberg and supported by Priscilla Cheever to contribute \$1,000 to Alison Harschel, as an honorarium to Alison who is the past president of NCCNR. Brad Vauter abstained because he would like the council to have a policy in place regarding donations.

VI. NEW BUSINESS

Jack Devine of the Department of Military and Veterans Affairs discussed veterans issues in Michigan. Jack noted that there are 731,000 veterans in Michigan and that the department of military and veterans affairs has an emergency fund for veterans and their families as well as administers the 2 state veterans homes in Michigan, one in Grand Rapids and one in Marquette. Jack said a big issue has to do with mental health and substance abuse problems. He said that the veterans home in Grand Rapids is the fourth largest state veterans facility in the United States and provides the largest care for long term care. Discussion of veterans Aid and Attendance. Bob Anderson noted there is no divestment penalty for obtaining veterans Aid and Attendance but, for the VA State homes, there are divestment penalties which may be more draconian than those under DRA so that it is difficult to juggle both Aid and Attendance with care in a state veterans facility. Also Harley noted that if an applicant is rejected for veterans Aid and Attendance, the applicant has to wait a full year before the applicant can reapply. Amy suggested that we have Jack ask at our fall conference at Crystal Mountain. Jack's e-mail address is devinej@michigan.gov. The Grand Rapids VA home has 755 beds but only 3 full time doctors to handle all of the patients-they are hoping to get another doctor. If an individual veteran is 70% service connected disabled, 100% of the veterans care would be paid by the veterans in a veterans facility and also in those nursing homes which have contracts with the VA.

VII. LEGISLATIVE UPDATE: CAPITOL SERVICES

Ellen presented the Capitol Services report. Most of the discussion centered on the success in presenting the overhaul of Blue Cross/Blue Shield proposed legislation, which did not pass. Ellen commended the Elder Law section for its advocacy and noted that unlike other advocacy groups, we did not have a conflict interest in the outcome as other groups such as AARP, which was very active in opposing the Blue Cross/Blue Shield proposed transformation. There will be a meeting on January 15th of people who want to insure that consumer protection is built into any change in the Blue

Cross/Blue Shield system in Michigan. Ellen noted that this issue will not go away. Attorney General Mike Cox and the press helped tremendously in opposition to the Blue Cross/Blue Shield proposed changes. Ellen suggested that we send letters to newly elected legislators congratulating them on their election and letting them know what our field of expertise is.

VIII. REMAINING NEW BUSINESS

1. Bob Anderson suggested that Michigan adopt a designation of burial service, much like that adopted in March of 08 in Wisconsin. (Gary Sherman, D-Port Wing, WI was the co-author of this legislation and is past president of the Wisconsin State Bar and State Representative for Paul=s district)
2. Dolores Coulter was presented with a plaque in honor of her service as chair of the section.

Meeting adjourned at 12:16 pm est

NEXT MEETING: February 7, 2009 at 10 am est at State Bar of Michigan.

Respectfully submitted

Paul A Sturgul
Secretary