

ELDER LAW AND DISABILITY RIGHTS SECTION COUNCIL MEETING

JUNE 4, 2011

10:00 A.M. - Noon (EDT)

Office of Baron, Rosenberg, Mayoras & Mayoras
1301 W. Long Lake Road, Ste. 340, Troy, Michigan

Present for meeting: Paul Sturgul, John Payne, Harley Manella, Caroline Dellenbusch, Jill Goodell, Amy Tripp, Michelle Fuller, David Kerr, Bob Anderson, Sandy Mall, Don Rosenberg, Sara Schimke, Rosemary Buhl, Conrad Hittner, Priscilla Cheever, Dolores Coulter, Rachel Holmes, Christopher Berry, Chris Hunter, David Sprague.

Guests: Ellen Hoekstra, Todd Tennis.

1. Introductions were made by those present, and via the telephone.
2. The May meeting Minutes were approved with a slight correction noting David Shaltz was working with Caroline Dellenbusch on a jointly titled real estate issue (and the newer BEM policy on joint real estate) rather than with Rosemary Buhl.
3. The Treasurers Report was received. The Section has on hand approximately \$84,000 per Rosemary Buhl and that doesn't yet include the awarded attorney fees in the recent litigation.
4. Legislative Update: Capitol Services. The state seems to be set on implementing the estate recovery program July 1, 2011, though this seems to be without actual approval from CMS in Chicago (at least for the recent BEM). An upcoming meeting with DHS director and former Mich. supreme court justice Corrigan, although mainly set up to address APS staffing, might also be able to touch on this? David Shaltz sent a letter saying that, since Medicaid policy are generated from DCH a meeting with DHS director Corrigan might be a waste of time. On the other hand, Hoekstra said, Corrigan is dynamic, and some state shuffling and internal organization might see her in a sort of coordinating role between DHS and DCH, despite her actual job title.
Other items of note, include legislation that might start regulating/vetting home health care workers, and "swing bed" legislation that would permit a hospital to keep a patient in the hospital even if some spaces were available at medicare certified facilities within 50 miles—this likely would benefit small town and rural hospitals most.
Handcuffing regulators by way of suggestion that all administrative rules come before the legislature for review, coupled with a review standard that no regulation more stringent than federal law be allowed, is also being suggested. This raises the concerns of many who think that federal

regulations should be a floor and not necessarily a ceiling, but in an odd way, in the Medicaid area, at least, some section members thought that keeping the state regulations in lock step with federal regulations, might actually be helpful.

5. Old Business

A. Spring Conference - Harley Manela said he was not certain if the Inn at St. Johns had been paid yet, but he hasn't heard any complaints. Paul thanked him for a job well done and suggested he might want to try to time next year's session so that it coincides with the council meeting date.

B. Section Newsletter - John Payne noted the newsletter is out, and Paul Sturgul commended John Payne and all the others who worked on it and contributed to it. Sending the newsletter out electronically is making the effort one of very modest cost.

D. BEM 401 Pooled Trusts is still an issue, per Michelle Fuller and she and other attorneys are continuing to research and structure things so that the right case might go forward. As a reminder, the section had already authorized up to \$5,000 to be spent on such litigation, but at present that money hasn't been released and there is not a demand or request for it. Additionally, there is some question whether or not the section could spend this money by employing a member of the section, and because this seemed to be a grey area, Amy Tripp and Priscilla Cheever agreed to look into this a bit more.

From a legislative perspective, Rep. Cotter is sending along a detailed letter to DHS director Corrigan, and seems willing to also introduce legislation to permit transfers into pooled trusts by those over 65.

E. BEM 400 Jointly Owned Real Property. Caroline Dellenbusch said the new policy might not be hard to overcome...if those involved are able to get a letter from a realtor saying that jointly held (with rights of survivorship) property has no value if one of the joint owners is unwilling to sell.

6. Committee Reports

A. POLST Committee - Bob Anderson has been working on this along with Connie Bridgeman and Caroline Dellenbusch. It was suggested a session about this be held at the fall conference.

B. Litigation Committee – Discussion about the payment requests from the attorneys involved in the class action ensued. A motion made by Brad Vauter to pay Mr. Goodman's bills (just costs) was approved. The more troubling discussions and motions centered on the larger bill request by Rene Reixach. A motion to deny payment at all, failed. A motion to "split the difference" ie pay 2,000 dollars, failed. A third motion to pay 4,000 dollars, passed.

As had been discussed in the past, these long discussions and the somewhat helter skelter approach we take to litigation and paying for or supporting litigation, may not serve us well, and David Kerr suggested that the litigation committee set out litigation goals for the entire board/council to discuss so that we make prudent use of our funds and so that we are able to keep in mind many other worthy projects we could attend to.

C. Health Care Reform Committee - Dolores Coulter reported on the Affordable Care Act. Michigan has high risk pools but hasn't made much progress yet on setting up the exchanges.

D. Legislative Committee - Brad Vauter mentioned the elder abuse packages moving through the legislature and also referred folks to the lobbyist report. The Alzheimer's check off looks like a go.

E. Unauthorized Practice of Law Committee - Bob Anderson mentioned the need to keep chipping away at this, and wondered if we have yet sent the letter to the State Bar chair about this issue. Brad Vauter said he would work on this with others and send suggestions to Bob and others later this year.

7. New Business

A. Fall Conference If folks have ideas, they should send them to Brad Geller

Future Section Meetings:

July - No Meeting

August 6, 2011 - Marquette, Michigan at Up Front and Company