

**ELDER LAW & DISABILITY RIGHTS SECTION
OF THE
STATE BAR OF MICHIGAN**

MINUTES OF JUNE 1, 2013

TAKEN BY:
PATRICK J. BOND, SECRETARY
ELDER LAW & DISABILITY RIGHTS SECTION
STATE BAR OF MICHIGAN

ELDER LAW & DISABILITY RIGHTS SECTION MEETING OF JUNE 1, 2013

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Matter One - Introduction

Matter 1.01 Location

Meeting took place at Chalgian & Tripp Law Offices PLLC, 1019 Trowbridge Road, East Lansing, Michigan. Present at Meeting.

Physically:

Telephone:

* Rosemary Buhl (Chair-elect)
* Christine Caswell
Dolores M. Coulter (Past Chair)
* Caroline M. Dellenbusch
* David J. Kerr
* Robert J. Longstreet
* Michael A. Mestelle
* Kelly J. McNerney Quardokus
* Christopher William Smith
* Beth A. Swagman
Todd Tennis (lobbyist)
* Bradley A. Vauter (Chair)

Robert C. Anderson
* Jane A. Bassett
* Patrick J. Bond (Secretary)
Patricia Kefalas Dudek
* Michele P. Fuller
* John B. Payne (Treasurer)
* James B. Steward
Paul A. Sturgul
Angela M. Swanberg
Amy Rombyer Tripp

* = Council Member

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Matter 1.02 Approval of Minutes

May 2013 Minutes approved unanimously with a small point of clarification.

Matter 1.03 Treasurer's Report

John Payne reported. Balance is \$101,850.

Discussion about budgeting for the Council President to attend the yearly State Bar Section Meeting. And David Kerr suggested adding an item on the 2014 budget to pay for a Council member to attend State leadership programs.

Matter 1.04 Legislative Report

See report of June 2013 by Ellen Hoekstra and Todd Tennis, our lobbyists from Capitol Services, Inc. Some of the more pertinent issues are discussed below:

(a) Increasing in Funding for Both Home- and Community-Based Waiver and PACE Programs

The Governor recommended funding increases in HCBW and PACE programs. They were approved by the conference committee.

Medicaid expansion, however, has yet been resolved.

(b) DCH Puts Up Roadblocks on Pooled Trusts

HB 4013 successfully left the House with a unanimous vote. This bill allows funding of assets by those Medicaid applicants when the applicant is over age sixty-five such that the transfer to the pooled trust is not treated as a divestment. 42 USC 1396p(d)(4)(C) makes no age restrictions for funding pooled trusts.

DCH, however, still claims that a pooled trust funded with monies by those Medicaid applicants at the time when the applicant is over age sixty-five is a divestment, because it believes such transfer into trust is not a transfer for fair market value. DCH also argues that it believes the federal government, despite it being permitted at (d)(4)(C), would view dimly Michigan's passage of HB 4013.

Thanks to David Shaltz for his advocacy on this issue.

(c) Guardianship Bills Get Pushback from Disability Advocates

HB 4382, 4383, and 4384 would grant authority to guardians to execute DNR Orders. The bills successfully passed the House and are awaiting action on the Senate floor.

Although not dealing with DNR's, SB 176 would allow a probate court to appoint a guardian, effective when the disabled individual turns eighteen years of age, to hold the hearing on it beginning when the individual turns seventeen years and six months. This procedure is designed as an administrative remedy for a family's last-minute rush to appoint a guardian for the adult disabled individual. Council has chosen not taken action on SB 176.

According to Patti Dudek, many advocates of disabled individuals are very concerned about the guardianship bill being proposed by Hope Network. Patti urged that ELDERS does not take a position in support of Hope Network's proposed bill.

(d) Bill Allowing Consecutive Sentencing for Perpetrators of Financial Abuse Becomes Law

HB 4264 would require a felony conviction for financially exploiting a vulnerable adult be served consecutively to other convictions.

(e) House Democrats Form Veterans' Task Force

The House democratic caucus has formed a task force intended to help veterans access health care and other services.

(f) Medicaid Expansion Would Increase Veterans' Health Coverage

According to the Urban Institute more than 25,000 uninsured Michigan veterans would receive health coverage if Medicaid expanded. Expanded Medicaid would cover individuals living with annual income at 133 percent of the federal poverty level.

**Matter Two -
Old Business**

Matter 2.01 Michiganlegalhelp.org

Rob Longstreet moves to send a letter to michiganlegalhelp.org indicating Council does not wish to give its endorsement to the website.

Motion was approved. One Council member, Patrick Bond, voting no, as the motion went to far in its across-the-board decision not to endorse it.

Matter 2.02 Ad Hoc Bylaw Committee – Suggested By-Law Change

Rosemary Buhl spoke about issues regarding streamlining language regarding online voting.

There are specific procedures to amend the bylaws. Ten people must petition the Council for a change. Upon review of the petition, the Council can make recommendations and publish final recommendations in the newsletter 30+ days prior to vote. The plan to amend bylaws will be circulated in June or July. Council intends to continue this discuss at the August meeting, and the summary of such discussion is intended to be printed in the next newsletter. Council will vote on this at the October conference.

The amendments will concern issues like, electronic voting, updating the disability language, and addressing consultant membership.

Matter 2.03 Pooled Trust Bill

See Matter 1.04(b).

**Matter Three -
New Business**

Matter 3.01 Letter from Specialization and Certification Committee

Jim Steward, also acting as a representative from the Probate and Estate Planning Section Council, spoke about that Sections desire in developing a program for certifying legal specialists in Michigan.

John Payne moved not to support the Probate and Estate Planning Section's desire to create specialty certification. Motion was supported by Patrick Bond. Motion was not voted on because of the motion to table the discussion—see below.

Motion to table discussion for next meeting was approved. Patrick Bond and Jim Steward abstained from the vote.

Matter 3.02 Fall 2013 Conference

Beth Swagman spoke about how planning is proceeding as planned. She spoke about a few changes to the registration form. A discussion also ensued about simply tweaking little things here and there, including a pre-registration discount.

The registration form is schedule to be delivered by e-blast just before the July 4th holiday.

Brad Vauter suggest tweaking some administrative concerns about paying speakers as well as the other expenses that get paid soon after the conference. This discussion was made in response to making sure all these expenses can get paid as soon as possible so they are paid before the soon-to-follow State Bar's fiscal year end.

Rosemary discussed possibly holding the 2014 conference at Mackinac Island.

Matter 3.03 Section Publication/Support for Guide Substituted Decision-Making

A Spring board from Project Wildcat. Project Wildcat is the name given to a project in creating an informational guide entitled, "Health Care Decision-Making for a Resident in a Nursing Home" created by Bradley Geller through the Michigan State Long-Term Care Ombudsman Office.

Motion made to support the possible preparation of its own informational guide for substituted decision making, rather than endorsing Project Wildcat. Motion approved unanimously.

Matter 3.04 ADR Section Joint Program Request Letter

Brad Vauter reported that the ADR section has offered to present to our section, or, if we are willing, to coordinate a dual seminar or conference. Brad will forward the information to the committee members of the Fall and Spring Conference to obtain their input on coordinating efforts. Council might consider inviting the ADR Section to prepare a presentation or workshop, particularly with family/elder issues that crop up.

Matter Four - Committee Reports

Matter 4.01 POST Committee – Bob Anderson

Bob Anderson reported on the Physician Orders for Scope of Treatment, also known as Physician Orders for Life Sustaining Treatment.

The POST committee, at its conference-call meeting in May, discussed the need for our Council to provide an analysis of the State of Michigan law on substitute healthcare decision making for use in implementing POST. The Committee has come to realize that the Project Wildcat should not be used. See Matter 3.03.

The POST Committee also would like the Council to propose guidelines on how attorneys can participate in the POST process based on the guidelines issued by Gunderson Medical Foundation.

Lastly, the POST Committee will be devising a survey tool for use in nursing homes and hospitals documenting how life support and end-of-life decisions are carried out when neither a Health Care Power of Attorney nor a guardianship exists.

Matter 4.02 Litigation Committee – Sandy Mall

Nothing to report at this time.

Brad Vauter suggested at next meeting we discuss other litigation issues worthwhile for Council to pursue.

Matter 4.03 Health Care Reform Committee – Delores Coulter

This issue will no longer be a standing topic on the agenda. The issue, however, will be addressed during those periods when the matter presents itself.

Matter 4.04 Newsletter – Jane Bassett

Deadline to provide articles is July 25th.

Matter 4.05 Unauthorized Practice of Law – Bob Anderson

Bob Anderson reported on this issue in his capacity as a representative of the Standing Committee on the Unauthorized Practice of law of the State Bar of Michigan.

Last UPL meeting was about a month ago. At that last meeting they formed a committee to talk about strategies pushing for a new definition to the practice of law. And to come up with various examples of the definition within various legal fields. Bob suggested ELDRS Council waits to hear back from the UPL committee.

Matter 4.06 Public Outreach Committee – David Kerr

David Kerr will be reporting at a later meeting.

Matter 4.07 Legal Hotline and Clark Hill Partnership

Brad Vauter commented that the law firm Clark Hill will be, in a manner of speaking, partnering with Legal Hotline of Michigan. Clark Hill has agreed to accept certain cases for pro bono legal services.

**Matter Five-
Announcements**

None.

**Matter Six –
Future Meetings & Adjourn**

Next meeting is August 3, 2013, located in Central Upper Peninsula, at Steward & Sheridan PLC, 205 S. Main St, Ishpeming, MI 49849. Phone: (906) 485-6311.

Meeting adjourned at 12:45 p.m.