

**ELDER LAW AND DISABILITY RIGHTS SECTION
COUNCIL MEETING
STATE BAR OF MICHIGAN**

March 3, 2007

The State Bar of Michigan

COUNCIL MEMBERS PRESENT: Roxanne Chang*, Dolores Coulter, Caroline Dellenbusch, Tom Hartwig*, Konrad Hittner, Art Malisow*, Sandy Mall, Harley Manela*, John Payne, Don Rosenberg*, Paul Sturgul*, Amy Tripp, Brad Vauter, Judge Allen Nelson.

SECTION MEMBERS PRESENT: Josh Ard, Rosemary Buhl, Doug Chalgian, Valerie Rice, Susan Wideman*

ALSO PRESENT: Ellen Hoekstra

*Participated Via Conference Call

The meeting was called to order by Chair, Sandy Mall.

1. Introductions

The members introduced themselves.

2. Approval of Minutes

The minutes of the February 3, 2007 meeting were approved.

3. Treasurer's Report

As of January 31, 2007 the ending balance was \$71,133.72.

4. Old Business

A. Spring, 2007 Conference Status Report

Harley reported that the flyers have been mailed and that participants may register online for the conference through the State Bar Website. Four non-profits are confirmed as vendors, they include: ICLE, MPRO, Hospice of Michigan, and Ombudsman/CBC. Any materials for the program should be e-mailed to Harley.

B. Fall, 2007 Conference

No report.

C. DHS Meeting Regarding DRA Rule Changes

The meeting will occur on March 7, 2007 at 1:00 p.m. Those attending the meeting will meet with Ellen and Todd at approximately 11:30 a.m. for a pre-conference.

D. Capitol Services Lobbying

Per a vote on the Council List Serve, the Capitol Services relationship was increased to include lobbying with respect to the following issues:

1. Estate Recovery Bills
2. Home and Community Based Waiver Services, and,
3. Estate Preservation.

E. Letter to Paul Reinhardt Regarding Dual Certification of Nursing Home Beds

Sandy reported that the letter has not yet been drafted. John Payne and Konrad Hittner agreed to draft a letter that would contain language that would contain language referring to both the State and Federal Law regarding the dual certification. There was discussion as to who should receive the letter in addition to Mr. Reinhardt. Doug Chalgian suggested that the Section may want to contact other groups to sign onto the letter. These groups include: Michigan Campaign for Quality Care, CBC, the Ombudsman's Office, Alzheimer's Association, and Area Agencies on Aging.

F. Discussions on the List Serve

During the previous month the Council had discussions and votes on several items.

1. It was approved that \$400.00 would be granted to the Michigan Campaign for Quality Care for underwriting their newsletter.
2. There was a vote and the Council agreed to officially oppose estate recovery acts.
3. There was a vote to increase Capitol Services with regard to lobbying.

5. New Business

A. Testimony Given Against Estate Recovery.

Dolores Coulter, John Payne and Brad Vauter all testified against estate recovery. Also joining them was Alison Hirschel and Jackie Doig from CCJ. Dolores reported that they focused with what was wrong with estate recovery, support for the waiver program and discussed estate preservation. The percentage of money collected from estate recovery would amount to approximately one-tenth of one-percent of the Medicaid expenditures. Representative Caswell seemed very interested in the costs regarding the home and community based care services. John reported that he addressed questions whether it was fair to have an estate recovery program and provided an article titled, "The Medicaid Gentrification Myth" as a supplement to his testimony. Brad Vauter reported that most of the questions came from Representative Caswell

and Representative Smith. There was discussion regarding the woodwork affect and imposing a cap on waiver services. Brad Vauter commented that Elder Law of Michigan receives numerous calls about estate recovery and waiver. Brad commented that the poor planning and fear encourages clients to react to the bad trust mill sales and annuity sales. Paul Sturgul referenced a study that he will provide that concludes that estate recovery pushes people into Medicaid. Paul noted that Charlie Sabatino did a report for the American Bar Association that provided many figures and facts with regard to estate recovery. Josh commented and suggested that the Section should look at the State of Georgia who just recently implemented estate recovery. Sandy reported on Ohio's implementation of estate recovery and stated that Ohio collected eight million in probate estate assets with very little effort; as little as three people writing letters. The next step that Ohio is discussing is hiring private attorneys to collect under estate recovery. Paul Sturgul stated that he had a contact in Ohio and was going to contact that individual for details regarding Ohio's estate recovery program.

Sandy reported that Susan Wideman suggested an announcement to all Section members regarding the Section's position on estate recovery. This could help empower Section members and their clients to engage in grass roots advocacy. Ellen commented that she posted a list of organizations who oppose estate recovery and encouraged members to review the list. She further encouraged members to contact their mayor and other state associations and report that the results of estate recovery are going to be extremely negative. Discussion led to the suggestion of Sandy posting an announcement regarding estate recovery with attachments of the bills with the certificate from the State Bar. In addition, providing Dolores' draft of the estate preservation alternative along with Ellen's summary of Tuesday's testimony and John Payne's testimony. There could also be direct links to the bill. This would be posted on the Bar's Website and the announcement sent to all Section members to seek information from that site. Susan Wideman suggested including a To Do list of what actions can be taken.

B. SB199 & 200

Sandy commented that this is a jail diversion program for individuals with mental illness. The Bill formalizes the diversion program and its procedures. John Payne made a motion for the council to support Senate Bill 199 & 200. The motion was seconded by Dolores Coulter. Discussion included comments that the Bill was actually just codifying the programs available for Judges. Pat Streater from the Prison Rights Section joined the meeting and reported on the Bill. After her report, of what was called, motion carried with 3 opposed.

C. SPE Expectations

The Expectations of the SPE's are posted on the list serve.

D. Social Security Letter

The Social Security process is extremely back logged and the system is not working. Patty Dudek had requested that a letter be sent to support efforts in trying to clean up the back log in the system. There is also a letter proposed by NASCR and this issue was tabled to discuss at the next meeting. Brad Vauter reported that he would provide information regarding delays at the Social Security Administration regarding hearings.

E. Service Tax

During our meeting there was much discussion regarding the Governor's proposed taxes on services. The State Bar of Michigan has taken the position to oppose the tax on services. Sandy had suggested that the Section take a neutral position. However, Brad Vauter was concerned that a neutral position would be supporting the State Bar's position. Brad was encouraged to raise the issue on the list serve for more discussion. Sandy concluded at this point the Section would take no position.

F. CMS- Medicare and Observation

There was discussion regarding some of the new proposed Medicare rules. The final rules are to be in effect July 1, 2007. Some of these new rules will make matters worse regarding obtaining Medicare benefits for long-term care services. In addition, there are also changes to the way that appeals are processed and handled. One of the changes that brought great concerns to the group was that an individuals admit status can be changed to observation after the individual has been discharged from the facility. Motion was made by John Payne and seconded by Paul Sturgul that Sandy be allowed to make public comment on behalf of the Section regarding these matters. Motion carried unanimously.

G. Judge Nelson was presented with is plaque for the Lifetime Achievement Award. Doug suggested that George Cooney be the second recipient for the Lifetime Achievement Award which could be presented to George at the Spring Conference. Caroline made a motion that was seconded by John Payne that George Cooney be the second recipient of the Elderlaw and Disability Rights Section Lifetime Achievement Award. Motion carried unanimously.

6. Legislative Update

See Capitol Services report that was posted and distributed at the meeting.

Ellen Hoekstra reported and commented on the budget crisis. Two identical Bills were introduced in the House and the Senate to implement Estate Recovery. The Bills were introduced by Senator Switalski and Representative Vagnozzi. Representative Vagnozzi may not have had a

clear understanding as to what the Bill was asking for. After a discussion with Capitol Services, Ellen reported that Representative Vagnozzi indicated that he would ask the committee chair not to take up his legislation. Ellen suggested that we schedule meetings with key legislators and focus on DCH subcommittees. The following is a list of individuals that were suggested to contact corresponding legislator:

Senator Roger Kahn – Carol Thomas
Senator John Pappageorge – Don Rosenberg
Senator Tony Stamas – Art Malisow
Senator Deborah Cherry – Dolores Coulter

Rep. Gary McDowell - Judge Nelson
Rep. Pam Byrnes – Amy Tripp
Rep. Bruce Caswell – Amy Tripp
Rep. David Agema – Caroline Dellenbusch
Rep. Aldo Vagnozzi – Harley Manela

It was suggested that the council obtain a list of its section members by location so that the council was aware of what section members could be contacted to assist with meeting with their legislators.

Sandy and Dolores are going to schedule a anti-recovery coalition meeting with the other organizations who had previously opposed Estate Recovery.

7. Other Issues

- A.** House Bill 4366 - DCH is seeking a waiver from CMS to permit funding in a home-for-the-aged. They have proposed a 600 person pilot project. This issue is to be discussed further on the list serve.
- B.** There was discussion regarding the final recommendations from the Elder Abuse Task Force. This discussion was tabled for next months meeting to review those recommendations. It was also suggested that Roxanne present at the next council meeting. The final recommendations can be obtained at miseniors.net
- C.** Konrad Hittner requested that the Section ask the Attorney General's Office to come and discuss the 5 year case in the 3rd Circuit.
- D.** Paul Sturgul invited everyone up for their Elder law Conference in the UP.

The next meeting is scheduled for April 7, 2007 at Sandy Mall's office. There being no other business the meeting was adjourned.

Minutes Respectfully Submitted by:

Amy R. Tripp
Secretary