

**ELDER LAW AND DISABILITY RIGHTS SECTION
COUNCIL MEETING MINUTES**

**MARCH 5, 2011
10:00 A.M. - Noon**

At the Inn of St. Johns- The Wisdom Room
Plymouth, Michigan 48170

Present: Jill Goodell, Caroline Dellenbusch, Amy Tripp, Priscilla Cheever, Paul Sturgul, Rosemary Buhl, Pat Bond, Susan Meier, Christopher Smith, John Payne, Valerie Lafferty, Sara Schimke, Brad Vauter, Todd Tennis. By Telephone: Sandy Mall, Laurie Murphy, Jackie Rydell, Laura Champagne, Michele Fuller, David Kerr, Dolores Coulter, Harley Manela, Art Malisow and guest Ellen Hoekstra.

1. Introductions were made.
2. John Payne moved, with a second by Priscilla Cheever that the minutes from February be approved with the addition of the attendance noted of Will Lucias, who appeared by phone. The motion passed.
3. Treasurer's Report - Rosemary Buhl presented the financial statements of the section. Even without the pending reimbursement for the section's litigations efforts, the balance in our account at the end of January was \$79,564. Approx another \$35,000 is expected to come in for attorney fees after the successful litigation. (The January figures do not include most of the spring conference income nor expenses.). The reports were accepted as presented.
4. Old Business
 1. Spring Conference - Harley Manela gave a report on the Spring Conference held the day previous. Attendance seemed to hold up very well compared to some other section conferences, and attendance was approximately 110—which is about what Harley had predicted a month ago. The materials for this conference will be posted on the section's website, and this will be a first attempt to distribute materials in a manner other than simply providing handouts at the conference. The Council applauded him for a job well done.
 2. Nursing Home Model Contract – No report. Laura Champagne will join the committee however, and will contact Brad Geller and Roxanne Chang.
 3. Section Newsletter - John Payne said folks had been informally working on preparing a newsletter, but a conference call with the editor of a similar effort in Wisconsin, which had been sought by Paul Sturgul, had not yet been held. Sturgul said the editor with the Wisconsin effort, was temporarily out of commission. Payne wondered if the section wanted to

pursue the newsletter or not. A lively discussion ensued. It was suggested that a publications or editorial committee be formed. Some asked whether we should go to all the effort of making a newsletter, with all the difficulties involved, when we already have a list-serve that is pretty active and has some archival capacity. Members weighed the differences between a newsletter, and a more formal journal, the latter being more scholarly and requiring much more effort, and perhaps putting the section's reputation on the line, if not carefully crafted. As was discussed in earlier meetings too, getting content, editing content, and even rejecting --or rewriting-- proffered content, can be tricky. Some were uncomfortable about the possibility that the newsletter could be a vehicle for individuals, more than a section service. It was suggested no advertising be allowed, and on this point, there seemed to be agreement. The newsletter would be published electronically. Finally a motion was made, and seconded: the section authorizes the newsletter editor to submit articles and other content (legislative summaries, meeting schedules, etc.) to the section officers for approval before publication, and if officers do not want something published or think edits are required, they must let the editor know within a reasonable time, or the publication will go forward. Eight were in favor of the motion, 4 were opposed, and one council member abstained. The motion passed.

4. BEM 401 Pooled Trusts—Worked on the pooled trust issue and the BEM set to go into effect April 1, were discussed. At this time the council is focusing on possible administrative and agency fixes, including a request from legislators to the DHS director Corrigan, with hopes the BEM could be put on hold or rewritten to make use of pooled trusts more likely. Just the day before some council and section members and the lobbyists for the section, met with state representative Kevin Cotter, a section member, to discuss this approach. At that same meeting Judge Mack said it is possible the probate judges association in the state might try to make favorable comments on this approach, and use of pooled trusts. Sandy Mall and Michele Fuller and Ellen Hoekstra will help brief Kevin Cotter and others further, on the issue as needed. If an administrative fix is not possible, the section could also try a litigation route, perhaps going for a TRO or a stay. Litigation might be possible too, with our litigation committee taking a lead, but issues as to standing, finding plaintiffs, possible judicial determination that wouldn't be helpful and the fact that the legislative history is cloudy and a CMS letter out of Chicago, unfavorable to the idea, need to be considered. At the next meeting, the idea of authorizing the litigation committee to act will be discussed again.
5. BEM 400 Jointly Owned Real Property--despite comments during the winter, the state's proposed BEM amendments--regarding jointly held property--look to also change come April 1st. There are strong policy and legislative history underpinnings for critiques of this proposed BEM. language. Rosemary Buhl and Paul Sturgul reported on some of the issues in detail, and Caroline Dellenbusch moved, and Rosemary Buhl, seconded a motion to authorize the section's litigation committee to make a report back to the section about possible litigation on the issue. The motion carried.

5. Committee Reports

1. POLST Committee – The committee has been very active, and money to assist with printing costs is sought. Although there is some uncertainty if this was approved last meeting, the council reaffirmed their willingness to spend \$250 of section funds to help the POLST group with printing, and this motion passed unanimously. (Other groups and organizations will also be approached for help in this effort—so the section will not be the only group contributing funds for printing needs.)
2. Litigation Committee - Sandy Mall said that most of the litigation committee report had been incorporated earlier, but they remain willing to tackle the BEMs and other issues as needed.
3. Health Care Reform Committee – there is nothing much to report at this time, said Dolores Coulter.
4. Legislative Committee - Brad Vauter said legislation to enhance penalties for vulnerable adult abuse issues, is finding support, and that the bill to change power of attorney law in Michigan, and to require acceptance by an agent (SB 92) is still moving forward. Many groups have commented on SB 92, primarily the Probate Section of the State Bar and the Michigan Banker’s Association. Suggested improvements have been offered, and the lobbyists have included James Steward’s suggestions which have also been channeled through the probate section.

6. New Business. Pat Bond advised the section that register of deed indexing procedures at the Wayne County Register of Deeds office, might make finding a record harder than one would think. Per Bond, if a life estate or lady bird deed is sent in for recording, it is likely the default entry for indexing purposes, will be the grantee—however it’s probably better if it is done as the grantor and grantee, not the ultimate possible beneficiary or remainderman. Amy Tripp announced she is assigned to a committee to look into the unauthorized practice of law, and in particular is looking for good ways to define the practice of law—so if members know of good ideas or statutes from around the country, she’d like to hear about them. David Kerr suggested that the section give some thought to possible amendments to Michigan’s administrative laws. Right now the Department of Human Services doesn’t need to submit BEM or BAM draft changes for legislative review.

7. Legislative Update: Capitol Services submitted a legislative and budget report.

The meeting adjourned at noon. Submitted by Brad Vauter, secretary.

The next two section meetings will be in Grand Rapids (April) and Lansing (May).
April 2, 2011 -Caroline Dellenbush’s office, 2944 Fuller Ave. N.E., Ste 100, Grand Rapids, MI 49505; **May 7, 2011** - State Bar Center, Lansing, Michigan