

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

**MINUTES OF MARCH 1, 2014**

**APPROVED APRIL 5, 2014**

TAKEN BY:  
JOHN B. PAYNE, SECRETARY  
ELDER LAW & DISABILITY RIGHTS SECTION  
STATE BAR OF MICHIGAN

# ELDER LAW & DISABILITY RIGHTS SECTION MEETING OF MARCH 1, 2014

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## Matter One - Introduction

### Matter 1.01      Location

The meeting convened at 10:09 a.m. on March 1, 2014 at Chalgian & Tripp Law Offices, 1019 Trowbridge Road, East Lansing, Michigan 48823.

### Matter 1.02      Attendance

Present/Call-In/Absent			Councilors	3/1/2014
<b>Bassett</b>	<b>Jane</b>	<b>A.</b>	*	A
<b>Bond</b>	<b>Patrick</b>	<b>J.</b>	Vice Chair	C
<b>Buhl</b>	<b>Rosemary</b>	<b>H.</b>	Chair	P
<b>Caswell</b>	<b>Christine</b>		*	P
<b>Fuller</b>	<b>Michele</b>	<b>P.</b>	Treasurer	A
<b>Goodell</b>	<b>Cynthia</b>	<b>Jill</b>	*	C
<b>Kerr</b>	<b>David</b>		*	A
<b>Longstreet</b>	<b>Rob</b>		*	P
<b>Lucius</b>	<b>William</b>	<b>D.</b>		A
<b>Mannor</b>	<b>Robert</b>	<b>D.</b>	*	P
<b>Messina</b>	<b>Maria</b>	<b>Rosaria</b>	*	P
<b>Mestelle</b>	<b>Michael</b>	<b>A.</b>	*	P
<b>Payne</b>	<b>John</b>	<b>B.</b>	Secretary	P
<b>Quardokus</b>	<b>Kelly</b>	<b>McNerney</b>	*	P
<b>Schimke</b>	<b>Sara</b>	<b>Ann</b>	*	C
<b>Smith</b>	<b>Christopher</b>	<b>William</b>	*	A
<b>Steward</b>	<b>James</b>	<b>B.</b>	*	C
<b>Swagman</b>	<b>Beth</b>	<b>A.</b>	*	C
<b>Vauter</b>	<b>Bradley</b>	<b>A.</b>	*	P
<b>Yarbrough-Thomas</b>	<b>Erma</b>	<b>S.</b>		C
Anderson	Robert	C.		C
Coulter	Dolores	M.		P
Dudek	Patti			C
Garcia	Darling			C
Hogan	Carol			P
Manela	Harley	D.		C
Quardokus	Matt			P
Rygiel-Sprague	Jacquelyn	A.		C
Sprague	David	D.		C
Swanberg	Angela			C
Tennis	Todd		Lobbyist	P

### **Matter 1.03 Approval of Minutes**

Approval of Minutes offered by John Payne, Secretary; moved by KellyQuardokus; seconded by Brad Vauter. Motion passed unanimously.

### **Matter 1.04 Treasurer's Report – Rosemary Buhl for Michele Fuller**

Rosemary said that the numbers seemed to be in line with the budget. Brad had a question about why the dues did not come out to the even dollar. Brad will follow up with Michelle at SBM.

## **Matter Two - Old Business**

### **Matter 2.01 Spring Conference March 14, 2014**

Harley Manela, Conference Organizer, reported that registration is going well, with about 70 registrants. That is typical for registration status two week pre-event. Legal aid employees and law students are being allowed free registration, but pay for the luncheon, if desired. That is usually around 10 attenders. Harley is expecting 100 to 120 total in attendance.

### **Matter 2.02 ICLE Collaboration – Rosemary Buhl**

This was discussed on the listserv. Rosemary has a group including Rosemary, Pat, Doug, Art, Kelly, Beth will get together with Jeff at ICLE. If anyone has thoughts that were not expressed on the listserv, those should be relayed to the group. ICLE's goal is fall of 2015 for an Elder Law Conference. There is no price point, but ICLE is shooting for 300 in attendance. Rosemary said that there is an advantage to not exceeding 150, because a smaller conference is more convivial. James Steward agreed.

### **Matter 2.03 “Whom Should you Trust” Presentations -- Brad Vauter**

August 6, 2014 is the intended date for the presentations. The presentations, according to Brad, are intended to be “as pure as Caesar's wife,” meaning free of marketing or sales by the presenters. The presentation is carefully scripted and presenters are not to provide additional handouts. There was also discussion about whether “whom” is proper English or outdated. The Council was unable to reach a consensus.

### **Matter 2.04 Michigan Bar Journal Update**

Christine Caswell and Rosemary Buhl decided on topics to present an overview. David Kerr will write an introduction to elder and disability law. Caroline Dellenbusch and Beth Swagman will write about representing the client with dementia. Chris Smith will produce an article about adding Medicare to a law practice. A piece by Robert Mannor and Jennifer Ackroyd-Fabris will be about a holistic approach to Medicaid planning. Michele Fuller will offer a paper on planning for persons with disabilities.

## **Matter Three - New Business**

No items to report.

## **Matter Four - Committee Reports**

### **Matter 4.01 Mental Health Committee – Christine Caswell**

Christine and Patti are working on mental health issues. There is a controversial case in Ingham County involving a mentally-ill defendant in a murder case. The defendant was absolved of responsibility for the murder, but the prosecutor will not back off.

The members of the Committee are considering a publicity campaign regarding mental illness issues. Todd Tennis will be following up on pending legislation regarding pejorative language in statutes and other bills pertaining to this issue. Brad moved that the Section send a letter of appreciation to the members of the Mental Health and Wellness Commission, seconded by Kelly Quardokus. The motion passed unanimously.

### **Matter 4.02 Fall Conference Committee 2014 – Beth Swagman/Robert Mannor**

Robert Mannor reported that the Fall Conference Committee would like Council approval of a schedule of sponsorship costs. The schedule was sent to Councilors by email on February 28, 2014. The Committee polled potential sponsors and asked what they would be willing to pay to sponsor the conference. Legal service organizations and advocacy groups might be allowed tables at no charge. Elder Law of Michigan and the Ombudsman's office would be offered tables and another free legal service provider may also be offered a table. Other nonprofit or profit entities may be allowed to sponsor or have vendor tables in the Committee's discretion. Michael Mestelle moved that the Council approve the Committee's sponsorship plan. Kelly Quardokus seconded the motion. The motion passed unanimously. Suggestions for sponsors should be routed to Robert Mannor.

### **Matter 4.03 Health Care Decision-Making Guide – Caroline Dellenbusch**

The group is moving toward finalizing the guide, but the difficulty is in making the guide comprehensible to the intended readership. Brad Vauter said that the objective is tenth grade reading level, but they are looking at other measures of readability. They are developing a comprehensive glossary.

### **Matter 4.04 Elder Abuse Prevention – Maria Messina**

The Committee has a panel for the Fall Conference and is working on outreach materials for judges, prosecutors, and safety personnel.

### **Matter 4.05 POST Committee – Bob Anderson**

It was not the POST Committee's intention to omit ELDRS as a coalition participant. Honoring Choices Coalition led by Carolyn Stromecki and Lisa Ashley, ED of the Michigan Association for Hospice and Palliative Care. There was discussion of a contribution by the Section for publications and outreach efforts. Patti stated that there is a concern about POST in the disability community, that this would impair the autonomy of medically frail individuals. There was no motion offered to make a contribution.

#### **Matter 4.06      Newsletter – Jane Bassett**

Copy for the next issue is due April 25, 2014. Councilors are encouraged to offer pieces at least once each term.

#### **Matter 4.07      Unauthorized Practice of Law Committee – Bob Anderson**

Robert Anderson brought up a company called “Medicaid Done Right,” which is providing Medicaid application services to nursing homes. This was the subject of a report by the Florida Bar and an Ohio Supreme Court action, which indicated that filing Medicaid applications is not the practice of law, but advising potential Medicaid applicants is. Robert asked that the Council members review the Florida report and consider taking a position that Medicaid planning by persons or organizations that are not attorneys is unauthorized practice of law.

Kelly Quardokus mentioned that some parties who may or may not be attorneys are approaching facilities and offering guardianship and other services – including preparation of POAs and PDAs for residents.

### **Matter Five – Legislative Update – Capitol Services, Inc.**

Todd Tennis reported that there is a lot of budget activity going on. Governor Snyder’s executive budget proposal for the 2014-2015 fiscal year calls for increased funding for early childhood education, a 6% increase for higher education, and a tax break for homeowners through a revamped homestead property tax credit.

The governor’s budget recommendation includes \$15.6 million to implement the recommendations of the Mental Health and Wellness Commission, \$16.4 million to continue support for current Program of All-Inclusive Care for the Elderly (PACE) sites and to add new sites in Flint, Lansing and Saginaw, \$5 million to eliminate the waiting list for home-delivered meals for the elderly, and \$26.2 million to make Michigan a “no-wait state” for the MiChoice Home and Community Based Waiver Program by expanding the program to an additional 1,250 individuals. Kelly Quardokus observed that Waiver applicants are being promptly evaluated.

The Alzheimer’s Association is requesting \$150,000 to establish a pilot program of outreach and crisis lines. The Association also needs to raise \$50,000 through the income tax check off to remain eligible for the check-off program.

The changes in BCBSM’s tax status and coverage mandate jeopardize coverage under legacy Medigap plans. In early February, Senator James Marleau (R-Lake Orion) convened a workgroup to discuss the effect on individuals covered by Medigap plans of the BCBSM transition to a non-profit mutual insurer. Senator Marleau’s staff recently informed CSI that they are working on legislation aimed at mitigating some of the effect that changes to Medigap could have on seniors and the disabled. Senator Marleau’s staff told us that they would like to have the input of ELDRS members on the draft bill, and CSI is working to ensure that communication with ELDRS and Senator Marleau’s office is maintained on this issue.

A package of bills that would strike offensive terms from Michigan statutes has been introduced in the House and Senate. House Bills 5345-5352 and Senate Bills 805-811 removes and modifies the terms “mentally retarded” and “mental retardation” from a number of different public acts. The terms are to be replaced with “developmentally disabled” and “developmental disability.” Todd will offer additional terms, such as imbecile and insane that should be removed from the statutes. John Payne moved and Kelly Quardokus seconded that the Section support the legislation. The motion passed unanimously.

The bills represent the first legislation introduced to implement the recommendations of the Mental Health and Wellness Commission, which delivered its report in January. The recommendations are contained under the portion of the report that outlines ways to remove the stigma attached with mental illness and developmental disabilities.

The Senate Bills were reported from the Senate Health Policy Committee on February 27, and the House Bills are scheduled for a hearing in the House Health Policy Committee on March 4.

HBs 5030, 5031 and 5032 pertain to joint accounts. These bills are reintroductions of portions of the vulnerable adult package that failed to pass last session. They deal with joint back accounts and require financial institutions to disclose certain information to people opening joint accounts. John Payne moved to support the bills, seconded by Michael Mestelle. The motion passed 9/2, with two abstentions. The Council’s concerns from the prior Council action will be communicated to the bills’ sponsors.

There was discussion of the digital asset legislation sponsored by Rep. Kevin Cotter, HB 5366-70. The consensus was that the Council is interested in the bills and that the sponsor should be informed by CSI of the Council’s interest, but that the Council needs more information.

Senate Bill 743, introduced by Senator Arlen Meekhof (R-Olive Twp.), would allow licensed attorneys in Michigan to remain licensed to practice law without paying membership dues to the State Bar of Michigan. The bill was seen by many as a reaction to the State Bar of Michigan’s advocacy of increased regulation on campaign funding for judicial candidates. The bill, which when introduced seemed to be on a fast track, has idled in the Senate Government Operations Committee and has seen no movement.

The reason for the lack of movement relates to the Supreme Court’s creation of a new task force to look specifically at the issue of how mandatory dues relate to advocacy by the State Bar. The 12-member task force has the goal of determining whether the State Bar’s duties can be accomplished by “means less intrusive upon the First Amendment rights of objecting attorneys.” The task force has been asked to issue a report by June.

The auto no-fault legislation has been tweaked but is still essentially the same bill and is not moving at the moment.

## **Matter Six – Announcements**

None to report.

## **Matter Seven– Future Meetings & Adjourn**

The next meeting will be April 5, 2014, at Caroline Dellenbusch, PLC, 2944 Fuller Avenue NE, STE 100, Grand Rapids, MI 48505.

Robert Longstreet moved to adjourn and Kelly Quardokus seconded the motion. The meeting adjourned at 12:15 p.m.