

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

MINUTES OF MAY 3, 2014

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

**ELDER LAW & DISABILITY RIGHTS SECTION
MEETING OF MAY 3, 2014**

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Matter One - Introduction

Matter 1.01 Location

The meeting convened at 10:05 a.m. on May 3, 2014 at State Bar of Michigan Headquarters, 306 Townsend Street, Lansing, MI 48933.

Matter 1.02 Attendance

Present/Call-In/Absent			Voting Members	5/3/2014
Bassett	Jane	A.	*	C
Bond	Patrick	J.	Vice Chair	P
Buhl	Rosemary	H.	Chair	A
Caswell	Christine		*	P
Fuller	Michele	P.	Treasurer	C
Goodell	Cynthia	Jill	*	P
Kerr	David		*	P
Longstreet	Rob		*	C
Lucius	William	D.	*	A
Mannor	Robert	D.	*	C
Messina	Maria	Rosaria	*	C
Mestelle	Michael	A.	*	C
Payne	John	B.	Secretary	C
Quardokus	Kelly	McNerney	*	A
Schimke	Sara	Ann	*	P
Smith	Christopher	William	*	P
Steward	James	B.	*	C
Swagman	Beth	A.	*	P
Thomas	Erma	S.	*	C
Ard	Josh			P
Coulter	Dolores	M.		P
Garcia	Darling			P
Rygiel-Sprague	Jacquelyn	A.		C
Sprague	David	D.		C
Sturgul	Paul			C
Swanberg	Angela			C
Tennis	Todd		Lobbyist	C
Tripp	Amy	Rombyer		C
Vauter	Bradley	A.	*	P

Matter 1.03 Approval of Minutes

Approval of the minutes for April 5, 2014 was moved by Chris Smith and seconded by Jill Goodell. The motion passed unanimously.

Matter 1.04 Treasurer's Report

Michele Fuller provided a report. The spring conference brought in \$5,780, plus \$210 in additional dues income, less expenses, leaves a fund balance of \$106,741.00.

Matter Two - Old Business

Matter 2.01 ICLE Collaboration

CLE is planning a Fall Elder Law Conference at the Inn at St. Johns in the fall of 2015. This could steal the Section's fall conference thunder. It calls into question whether the Section should continue to present spring and fall conferences according to the current model. David Kerr raised questions about whether ICLE would continue to provide scholarships and to maintain the multi-disciplinary nature of the ELDRS Fall Conference.

Amy Tripp feels that the ELDRS Fall Conference is a special opportunity for networking and mentorship for new members. She was introduced to the holistic nature and importance of elder law at a Fall Conference. She suggested that a conference on the model of the Fall Conference should be continued, but perhaps presented at a different time of the year.

Beth Swagman reported that Jeff Kirkey would make no commitment to model the new ICLE fall conference on the ELDRS format. ICLE's perception is that their proposed fall conference is a new concept that ELDRS should see as enhancing the Section's efforts at presenting continuing legal education and fostering good elder law services. James Steward observed that elder law attorneys and probate attorneys practice differently, so the model used by ICLE for the probate conference would not be optimal for elder law. He is not convinced that ELDRS can work constructively with ICLE, but he is not convinced that ELDRS cannot do so.

There was discussion about having the ELDRS big conference in the summer, or presenting shorter CLE sessions, more frequently.

Pat Bond said that if our objective is to provide quality education in elder law, we should see how working with ICLE can further that objective. Robert Mannor said that if the motion passes, the Council could still change the date.

The motion by John Payne to go forward with a 2015 Fall Conference scheduled for September 30 – October 2, 2015 was approved on a voice vote. There was a consensus that there should be further discussion with ICLE, but that there should be an opportunity for an ICLE nuts and bolts conference and an ELDRS conference with a more holistic approach.

Matter 2.02 SB-843 and SB-844

SB 843 and 844 give OIG investigators arrest powers and authority to carry guns. The bills are the subject of hearings in the Senate Judiciary Committee. A hearing on April 30, 2014 was cut short due to absence of committee members considered by the chair as necessary. Another hearing is scheduled for May 6, 2014.

Matter Three - New Business

Matter 3.01 State Tax Commissioner's Complaint

Robert Anderson circulated a request to the State Tax Commissioner to conform the tax information booklets regarding uncapping rules to current law.

Matter 3.02 Flowers and Contribution Authorized

Jill Goodell moved that the Council send a bouquet worth \$50 and a check for \$25 payable to the Alzheimer's Association in the name of the wife of a former member of the Council to her to express the Council's concern for her health following a diagnosis of cancer. David Kerr seconded the motion, which passed on a voice vote.

Matter Four - Committee Reports

Matter 4.01 Mental Health Committee – Christine Caswell

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

Beth Swagman moved that the committee send out four e-blasts, seconded by Christopher Smith. The motion passed on a voice vote.

Matter 4.03 Unauthorized Practice of Law Committee

The Michigan Supreme Court sent a short note to the Michigan Bar declining to implement the proposed definition of the Practice of Law. The UPL Committee will write a letter protesting the Court's position. There was discussion about preparation of deeds by title companies and others.

Matter 4.04 Other Committees – Tabled Until Next Month

Matter Five – Legislative Update – Capitol Services, Inc.

The budget process is in full swing in Lansing, and as this report is being written, the House and Senate are both close to passing their own versions of the state budget. Once they finish, each chamber will review their counterpart's budget proposal. Through May and June, conference committees will work out the differences.

The election season is in full swing as the filing deadline to run for office was April 22. Lawmakers in Lansing and Washington will be more focused on campaigning than passing legislation until November. Once the budget is completed, the Legislature is expected to leave for the summer recess, and most legislators are champing at the bit to get back to their districts. Major issues other than the budget that could be addressed before they leave include a package of bills to increase transportation funding and Governor Snyder's proposal to use \$350 million in state funds to help smooth Detroit's bankruptcy.

See below for more information on issues affecting ELDRS members and their clients.

Governor's Proposed DCH Budget Increases Mostly Survive House and Senate

Funding for the Mental Health and Wellness Commission, the PACE program, the Home and Community Based Waiver and In-home services for seniors that was proposed by Governor Snyder found its way into both the House and Senate versions of the Department of Community Health Budget. However, while the House and Senate concurred with the Governor on most of these items, there remained a difference relating to the funding for the Mental Health and Wellness Commission that will need to be addressed in conference committee.

Expansion of the Home and Community Based Waiver seems to be in the clear, as both the House and Senate agreed with the Governor's proposal to increase the funding by \$26 million to eliminate the waiting list that currently stands at approximately 1,250. Similarly, expansion of the Program of All-Inclusive Care for the Elderly (PACE) and increases to senior services such as in-home care and nutrition was also passed by both the House and Senate. However, only the House agreed with the Governor's proposal to set aside funding for the implementation of the recommendations of the Mental Health and Wellness Commission. The Senate instead inserted a placeholder of only \$200 which indicates a willingness to provide funds, but a disagreement on the total amount.

Both the House and Senate also included funding for a program that was not contained in the Governor's recommendation, but has been supported by ELDRS. The Alzheimer's Association had asked for \$150,000 for the purpose of initiating a pilot project of enhanced services in three counties: Monroe, Macomb and St. Joseph. The House and Senate both included sufficient funds in their versions of the DCH budget, but because the House created an individual line-item and the Senate designated the funding through boilerplate language, the two chambers will still need to address this "point of difference" during the conference committee process.

Community Mental Health Association Warns of Service Cuts

Due to what is being called a “flaw” in Medicaid Expansion, CMH programs around the state are in the process of preparing for possible budget cuts that in some cases could be quite severe. The issue stems from passage of legislation expanding Medicaid in Michigan. The new program, called the Healthy Michigan Plan, covers low-income individuals whose income falls between 100% and 133% of the federal poverty rate. The funding cuts stem from the expectation that Community Mental Health services will now be able to be reimbursed by federal Medicaid dollars. In expectation of this, the Michigan Legislature reduced General Fund dollars going to CMHs by \$235 million. The state expects that these funds will be replaced by \$260 million from the Healthy Michigan Plan.

However, CMH officials are saying that reality is not meeting those expectations. They believe that the projected savings were overly optimistic, and that there will not be enough from services provided to those enrolled in the Healthy Michigan Plan to make up the difference in cuts. Over time, it is hoped that enrollees in the Healthy Michigan Plan will make up the difference in General Fund cuts, but CMH programs around the state are already preparing for service cuts in response to the current shortfall.

DHS Warrantless Arrest Bill Moving in Senate Committee

The Senate Judiciary Committee held a hearing on April 30 to take up Senate Bill 843. This bill, sponsored by Senator Rick Jones (R-Grand Ledge), would allow the Department of Human Services director to grant limited police powers to the department’s Office of Inspector General agents. Currently, these agents are charged with investigating cases of fraud, waste and abuse in programs administered by DHS. If they find wrongdoing, they make referrals for prosecution.

SB 843 would allow agents of the Office of Inspector General to make arrests – even without warrants – of individuals whom they suspect of committing felonies relating to Medicaid, welfare or food assistance fraud. In addition, the bill would permit the DHS director to authorize agents to carry firearms.

The ELDRS Council voted to oppose SB 843, and Brad Vauter attended the hearing in order to testify on behalf of the Section. Unfortunately, due to time constraints, Senator Jones (who also chairs the committee) chose not to allow testimony and moved for a vote on the bill. Senator Jones cited the fact that the bills had already been the subject of a previous committee hearing in making his decision to deny testimony. John Payne, who authored written testimony that was turned into the committee clerk, should appear on the record of the committee.

Although Senator Jones had hoped to move the bill out of committee, he fell short of obtaining the necessary three votes due to the absence of Senator Tory Rocca (R-Sterling Heights) and the unwillingness of Senator Steven Bieda (D-Warren) to approve the bill without further investigation. Senator Jones promised to take the bill up again on May 6. It is unknown whether testimony will be allowed on that date.

Brad Vauter explained that the bills would primarily affect individuals who are applying for benefits in good faith, but who do not understand the rules. James Steward submitted a list of reasons to oppose the bills to the Council. He suggested a letter from the Chair or from the Council to the members of the committee. Todd will send the Secretary of the Section a list of members of the Judiciary Committee and a message to the ELDRS listserv and the Probate listserv, who will post the message to those lists.

New Substitute Bill Being Prepared on Pooled Trust Issue

After several months of meetings with representatives from the Department of Community Health and the Attorney General's office, Representative Kurt Heise (R-Plymouth) is preparing a new draft for House Bill 4013. The new draft will attempt to accommodate concerns

raised by DCH regarding whether or not transferring funds to a pooled trust is a transfer for less than fair market value. Once Representative Heise completes the new draft, ELDRS will continue efforts to move the bill forward.

It was suggested that a speaker about Medicaid expansion be added to the Fall Conference schedule.

There was a request to add discussion about a “hearts and flowers” fund to the June agenda.

Matter Six – Announcements

No announcements.

Matter Seven– Future Meetings & Adjourn

The next meeting will be June 7, 2014, at Bassett & Associates PLLC Office 2045 Hogback Road, Ann Arbor, MI.

Adjournment was moved by Beth Swagman and seconded by Christine Caswell. The meeting adjourned at 12:00 p.m.