

Elder Law and Disability Rights Section Meeting minutes

November 5, 2011, Office of Barron, Rosenberg, Mayoras & Mayoras, PC

Present in person : Katy Graham, Vincenza Castiglione, Christopher W. Smith*, Sara Schimke *, Dolores Coulter, Ellen Hoekstra, Don Rosenberg, Michele Fuller*, Rob Longstreet*, Pat Bond*, John Payne*, Bob Manor, Caroline Dellenbusch*, Rosemary Buhl*

Present via telephone: Michael Mestelle*, Paul Sturgul*, Beth Swagman*, David Kerr*, Angela Swanberg, Will Lucius*, Sandy Mall, Todd Tennis (Capitol Services), Art Malisow*, Jackie Rydell, Harley Manela**, Kelly Quardokus*

*Indicates voting council members.

**Mr. Manela was not present for the votes.

1. Meeting began at 10:00 am. Introductions were made for those present, and via telephone.
2. Minutes:
 - a. The September (Annual) meeting minutes were approved. Motion made by Michele Fuller, Seconded by Rosemary Buhl, motion passed unanimously.
 - b. The October meeting minutes were approved. Motion made by Michele Fuller, Seconded by Sara Schimke, motion passed unanimously.
3. The Treasurer's report was received. Stipend still needs to be paid to Michael Gilflick of \$1500. Ending fund balance of \$119,046.46.
4. Legislative Update (For complete analysis of the legislation, please see November Legislative Reports prepared by Capitol Services)
 - a. Estate Recovery—Discussion by Todd & Ellen. No substitute bill has been released to us yet. It is unclear how far along this is. Council members were encouraged to contact their own senators.
 - b. Additional bills included in Vulnerable Adult Package that Council had not yet taken a position on: Vote Held of SB 604 & 605—Motion made by David Kerr to support, seconded by John Payne. Vote passed, with approval of all present council members.
 - c. SB 604 & 605: Motion made by John Payne to draft a letter to the bill sponsor & other appropriate legislators, requesting that the bill be strengthened through a disclosure, in legible typeface on separate sheet of paper. Seconded by Michele Fuller. Motion approved by all present council members. Katy Graham and Pat Bond to work together to write disclosure.

- d. SB 777: Motion made by David Kerr to support the Motion in concept. Seconded by John Payne. Discussion was held regarding the position.

5. Old Business

- a. Fall Conference 2011—According to feedback it appears that the section will break even for the conference. This is very rare. Crystal Mountain is reserved for 2012. Discussion was held regarding location for 2013, sites are already filling up.
- b. Spring Conference—Harley Manela stated that the conference is scheduled for Friday March 16, 2012 at the Inn at Saint John's in Plymouth. The plan is to have the March Section meeting held the following day. (March 17, 2012).
 - i. Motion was made by Christopher Smith to Authorize Harley to sign any and all contracts necessary in the future and to ratify any contracts signed by him for the Spring 2012 conference to date. Seconded by Beth Swagman. Vote passed unanimously (Harley was present, but abstained from voting).
- c. BEM 405 Pooled Trusts—Sandy Mall/Michele Fuller—2 plaintiffs have now been identified. It is anticipated that filing will occur before December council meeting.
- d. Estate Recovery FOIA—Brad V. and John Payne have made some requests, have not received responses yet. No costs yet incurred.
- e. By-law Changes—Caroline appointed a committee to review the existing by-laws and bring recommended changes to the council. Committee consists of Caroline, Brad Vauter and Rosemary.

6. New Business

- a. Translation of Designation of Patient Advocate—Katy Graham made a request for funds to be provided to have the Designation of Patient Advocate translated into several languages. Katy, working with attorney Vincenza Castiglione, who is fluent in multiple languages, are gathering support to help fund this project. The languages to have it translated into are: Italian, Korean, German and Chinese. Katy requested the sum of \$5,000 to put toward the printing and translation. John Payne made the Motion to pay \$5000 to Wayne County Neighborhood Legal Services, to act as fiduciary, for the use of these funds. Seconded by Christopher W. Smith. Motion passed unanimously by all present council members. After the vote, Caroline also volunteered to assist with the translation into German, of which she is fluent.
- b. Conference Call Number—we have a new host #. It has been separated from POLST, to better track the expenses.

- c. Budget. Caroline and other officers to meet with State Bar to discuss budget issues. Budget discussion to continue.
7. Committee Reports
- a. POLST—Caroline discussed that the last POLST task force conference call had a large increase in participation. An in person meeting is to be held in Lansing in two weeks. As the size of the group is increasing, it is becoming difficult to pin down the language concerns for the proposed legislation. The goal is to have some pilot areas.
 - b. Litigation Committee—Sandy Mall--discussion was continued regarding a need for budget and guidelines regarding priorities of litigation. There are numerous hot issues at this time:
 - i. Pooled Account Trust –already discussed previously
 - ii. IRA/401k—Have a plaintiff to challenge the State’s position. Very sympathetic. Used 100 days, upside down on house. “Living With” may be the problem for the litigation. Waiver would be the best plaintiff. Sandy as committee chair asked for \$15,000 for support of this action. Discussion was held regarding who can be paid, and how a section member could be paid. Sandy agreed that clarification was needed and that he would discuss it with the State Bar. David Kerr suggested that the Client be the recipient of the funds, to be reimbursed for attorney fees. David Kerr made a motion to “set aside” \$15,000 to support litigation regarding the IRA/401k, taking that position that the State’s rules and regulations are invalid. Seconded by Paul Sturgul. Vote was held. Art Malisow abstained. All others voted in support. Sandy is to follow up on how/ to whom this payment can be made.
 - iii. Dual Certification of Beds—there is an increase in the number of beds which are certified as Medicare only and a decrease in the Medicaid certified beds. This needs to be challenged, Sandy believes in Ingham County. Sandy requested \$2500 to support this litigation, which is believed to be much less complicated. Motion made by Michele Fuller to allocated \$2500 to fund a petition for superintending control (or whatever is needed) to challenge this issue. Seconded by John Payne. Vote was held, Art Malisow abstained. All others present voted in support.
 - iv. Standard of Promptness—Sandy believes this to be appropriate for a Federal Action. Class action may be appropriate. Will discuss further at next meeting.

- v. Budget—Sandy emphasized that this needs to be determined. Sandy requested that a list be sent to him with other suggestions or priorities.
 - c. Health Care Reform Committee—Dolores—CLASS ACT taken out of Health Care Reform, as too expensive. .
 - d. Legislative Committee—Brad V. – tabled, Brad V. Absent.
 - e. Newsletter—John sent draft out for review.
 - f. Unauthorized practice of Law—No report. Kelly Quardokus said that there is good information on the State Bar website, about the truths and myths of EP.
 - g. Fall Conference Committee—Beth Swagman—dates for 2012 conference are October 3,4 and 5, 2012. Committee has met once and discussed topics such as the registration, scheduling of workshops, handbook. Assigned responsibilities. Beth has been in contact with Brad Gellar, and he is responding to the committee. Thoughts need to be made now for a key notes speaker. Beth made a request for any ideas for future locations to be sent to her.
8. Announcements—Brad V. made a reminder announcement about the upcoming Medicaid Boot Camp in the Metro Detroit Area, presented by David Shaltz to support ElderLaw of Michigan.
9. **December 3, 2011 Meeting at Chalgian & Tripp Law Offices, 1019 Trowbridge Road East Lansing, MI 48823.** Plan is to have both January and February meetings, locations TBD. Motion made by John Payne to Adjourn, seconded by Michele Fuller. Passed unanimously.

Meeting ended at 12:10pm

Respectfully submitted by Rosemary H. Buhl