

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

MINUTES OF NOVEMBER 2, 2013

APPROVED DECEMBER 7, 2013

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

ELDER LAW & DISABILITY RIGHTS SECTION MEETING OF NOVEMBER 2, 2013

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Matter One - Introduction

Matter 1.01 Location

The meeting convened at 10:00 a.m., at State Bar of Michigan Headquarters, 306 Townsend Street, Lansing, Michigan 48933

Matter 1.02 Attendance

Present/Call-In/Absent			Councilors	P/C/A
Bassett	Jane	A.	*	P
Bond	Patrick	J.	Vice Chair	C
Buhl	Rosemary	H.	Chair	P
Caswell	Christine		*	P
Fuller	Michele	P.	Treasurer	C
Goodell	Cynthia	Jill	*	P
Kerr	David		*	P
Longstreet	Rob		*	C
Lucius	William	D.		C
Mannor	Robert	D.	*	P
Messina	Maria	Rosaria	*	P
Mestelle	Michael	A.	*	P
Payne	John	B.	Secretary	P
Quardokus	Kelly	McNerney	*	P
Schimke	Sara	Ann	*	C
Smith	Christopher	William	*	P
Steward	James	B.	*	C
Swagman	Beth	A.	*	P
Vauter	Bradley	A.	*	P
Yarbrough-Thomas	Erma	S.		C
 Others in Attendance				
Coulter	Dolores	M.		P
Dedden Cooper	Lisa			P
Dellenbusch	Caroline	M.		P
Hoekstra	Ellen		Lobbyist	P
James-Jura	Kelley			P
Swanberg	Angela			C
Sturgul	Paul			C
Tennis	Todd		Lobbyist	P
Woods	Audra			P

Matter 1.03 Approval of Minutes

Proposed Minutes of October 4, 2013 Annual Meeting were offered by Patrick Bond. Jill Goodell moved to approve the minutes. Brad Vauter seconded. The minutes were approved on a voice vote.

Matter 1.04 Treasurer's Report

John Payne, outgoing Treasurer, reported a year-end balance of \$72,259.15 for fiscal year ended September 30, 2013.

Michele Fuller, new Treasurer, presented her proposed budget. She reviewed the Bar's chart of accounts, which is reflected in the budget, with Becky Hunter in the Bar fiscal office. The Bar will add separate accounts for the Spring Conference and Fall Conference. She explained the proposed budget, which reflects a shortfall of \$12,000, apart from any appropriation for litigation. Brad Vauter said that litigation should remain in the budget and raised the question of bar participation expenses, such as leadership conferences, under miscellaneous, which did not have a budgeted amount. Brad suggested a dues increase. Suggestions to address the shortfall included putting on seminars to raise funds, advertising in the newsletter or establishing a foundation suggested by Paul Sturgul, conference sponsors/exhibitors, suggested by Rosemary Buhl. Brad pointed out the difficulty of vetting sponsors. Requesting grants from charitable foundations was suggested by Kelly Quardokus.

David Kerr observed that establishing our own foundation would present a lot of compliance hoops to jump through. Bob Mannor said that a foundation might draw more contributions if specifically for litigation, but Michele stated that a foundation would involve additional levels of complexity. She advised belt-tightening across the board. She also suggested contacting Elder Law of Michigan to ask about partnering in seminars like MA Bootcamp. Rosemary suggested not taking any action, but to let Fall Conference Committee explore alternatives. Thanks to John and Michele. Michael Mestelle moved approval of the budget. Patrick Bond seconded. The motion passed on voice vote.

Matter 1.05 Legislative Report

See report of November 2013 by Ellen Hoekstra and Todd Tennis, Capitol Services, Inc. Ellen pointed out that there are only about a dozen session days before the end of the calendar year. She also stated that she will be moving into an "of counsel" position at Capital Services and Todd will be assuming primary responsibility for the ELDRS account. Some of the more pertinent issues are discussed below:

(a) Pooled Trust Legislation

HB-4013 has continued to be the subject of meetings with the Snyder Administration. Department of Community Health and the Attorney General are still opposed to the bill. There are proposed attorney-level meetings, but it is unlikely that the bill will move forward this calendar year.

Todd reported that HOPE Network has pulled out of the Pooled Asset Trust lobbying effort. He stated that the question is whether funding a PAT by someone over 65 is divestment and DCH contends that it is. Ellen suggested letters from Section members and others interested in the issue to their representatives to promote continued interest in the issue

(b) Telecom Bill

The Telecom bill would allow telephone service providers to request permission from the Public Service Commission to drop land line service in areas where there is “adequate” cell service. The bill is opposed by AARP and the Public Service Commission, among other advocates for older adults, the rural poor and persons with disabilities. Those constituencies include many who would be disadvantaged by termination of land line service. Brad Vauter moved to oppose the bill. Jane Bassett seconded the motion. It passed on a roll-call vote, 20-0.

(c) Uniform Adult Guardianship and Protected Person Jurisdiction Act

The UAGPPJA is supported by AARP and the Alzheimer’s Association, but opposed by the Probate Section and some probate judges. James Steward stated that temporary absence from the jurisdiction is an issue that is not properly resolved by the UAGPPJA. He also stated that there is a six-month jurisdictional cliff. If the potential ward is absent for six months and a day the home-state probate court loses jurisdiction.

Lisa Dedden Cooper stated that 37 states, plus the District of Columbia and Puerto Rico have adopted the UAGPPJA and AARP supports the legislation in the interest of comity and consistency.

Jane Bassett moved to appoint a committee to assess the UAGPPJA issues. Jill Goodell seconded the motion. The motion passed unanimously. James Steward, David Kerr, Brad Vauter, and Lisa Dedden Cooper volunteered to be on the committee.

(d) No-Fault Auto Reform and Medicare Opt-Out

The No-Fault Auto Reform and the Medicare opt-out to unlimited personal injury protection benefits do not appear to be moving forward. Both bills face strong opposition.

(e) Court of Claims Elimination Bill

A house bill to eliminate the court of claims as a division of the Ingham County Circuit Court and assign claims against the state to four Michigan Court of Appeals judges to be appointed by the supreme court was recently introduced. It appears to be on a very fast track to passage. Certain councilors were concerned the court of appeals would be a less hospitable forum for the types of appeals and claims elder law and disability-rights attorneys pursue. John Payne moved that the counsel oppose the bill. Jane Bassett seconded the motion. The motion was passed on a roll-call vote, 19-0, with one abstention.

Matter Two - New Business

Matter 2.01 Priorities FY 2014

Rosemary Buhl suggested that each member of the Council participate in at least one committee. She also proposed additional committees for website organization, electronics and listserv, legislative matters and financial abuse of vulnerable adults.

Matter 2.02 Spring 2014 Conference

Rosemary Buhl talked to Harley Manela. The Spring Conference will be Friday, March 14, 2014, at The Inn at St. Johns. Rosemary also spoke to a conference facilitator at the State Bar. The Bar wants paper materials 30 days ahead. It needs less lead time for electronic materials.

Matter Three - Committee Reports

Matter 3.01 Fall Conference Committee – Beth Swagman

Beth Swagman reported on 2013 Fall Conference. Attendance was 135, down from 145 last year. The Committee awarded 17 scholarships, up from 11 last year.

Matter 3.02 POST Committee – Robert Anderson

James Steward reported that a draft form was submitted to POST, but not with the Section's explicit authorization. This is still in preliminary stages, but James says the Section needs to formulate its position.

Rosemary has been in contact with the Probate Section and others regarding collaboration. The POST Committee is being asked to give a target date to present a proposed document. James suggested a meeting of the POST Committee before the next Council meeting. Carolyn Dellenbusch will coordinate the meeting. Robert Anderson will circulate a draft document.

Matter 3.03 Litigation Committee – Sandy Mall

No report from the Litigation Committee, but John Payne reported partial success in the caretaker agreement Medicaid appeal in Muskegon Circuit Court. He had submitted an amicus brief on behalf of the Section, supporting the appellant's position. He stated that the judge refused to apply the rigorous caregiver agreement rules for family caregivers to non-family caregivers, reversing part of the divestment penalty, but the judge let stand the divestment penalty for reimbursement of mileage paid to a relative without prior agreement. David Kerr said that he understands the opinion as being based on a lack of specific authorization for reimbursing expenses in the power of attorney.

Matter 3.04 Newsletter – Jane Bassett

Erma Yarbrough-Thomas has assumed responsibility for maintaining a calendar of events for the newsletter.

Matter 3.05 Unauthorized Practice of Law – Robert Anderson

Nothing Reported.

Matter 3.06 Mental Health Issues – Christine Caswell

Christine Caswell reported on the Mental Health and Wellness Commission hearings and the Councilors who gave testimony.

Matter 3.07 Community Outreach – Kelly Quardokus

There was discussion about legal self-help and the Section’s position on the Michigan Poverty Law Program’s self-help website, michiganlegalhelp.org. MPLP is still requesting support for its effort to put some estate-planning forms on its website. The Section has stated that it is supportive of legal self-help with simple litigation, such as filing for divorce or opening a probate estate, but opposes creation of estate-planning documents without the assistance of an attorney.

Kelly Quardokus stated that we need to refine our message for outreach. A health-care decision-making guide is contemplated, but not yet in draft. Prior efforts at presenting a guide foreshadow potential problems.

**Matter Four–
Announcements**

None.

**Matter Five–
Future Meetings & Adjourn**

Next meeting is December 6, 2013, at Bassett & Associates, PLLC, 2045 Hogback Road, Ann Arbor, MI 48105

Kelly Quardokus moved to adjourn, seconded by Michael Mestelle. The meeting adjourned at 12:30 p.m.