

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

PROPOSED MINUTES OF NOVEMBER 1, 2014

TAKEN BY:
MICHELE P. FULLER, SECRETARY
ELDER LAW & DISABILITY RIGHTS SECTION
STATE BAR OF MICHIGAN

ELDER LAW & DISABILITY RIGHTS SECTION
MEETING OF NOVEMBER 1, 2014

Matter One Introduction

Matter 1.0 Location

State Bar of Michigan, Lansing, Michigan.

Meeting convened at 10:03 a.m.

Matter 1.2 Attendance

In person: Bond*(P), Buhl*(ex officio), Caswell*, Dellenbusch, Fuller*(S), Garcia, Goodell*, Kerr*, Mannor*, Mestelle*, Peterman, Quardokus*, Swagman,* Tennis.

By phone: Anderson, Bassett*, Hentkowski*, Lucius*, Mall, Manela, Messina*, Payne*(P-E), Schimke*(T), Sprague*, Steward*, Smith*, Anderson, Collens, Reigel-Sprague, Sturgul, Thomas*

(P)-President

(P-E)-President-elect

(S)-Secretary

(T)-Treasurer

* voting member of the council

Matter 1.3 Approval of Minutes October Meeting

Approved by John Payne. Approval of the minutes for October 2014 was moved by Beth Swagman and seconded by Jill Goodell. The motion passed unanimously.

Matter 1.4 Treasurer's Report – Michele Fuller

Michele Fuller provided her last Treasurer's report. Anticipating the payment of fall conference invoices. Otherwise no major changes. The report was accepted.

Matter Two New Business

Matter 2.1 FATA legislation – Howard Collens

Howard Collens: Summary of FATA legislation to allow fiduciary access to digital assets and social media. There is a gap in the law. Doesn't deal with who can access digital assets upon disability or death. There is no federal or state law for guidance. Uniform law commission has been working on drafting a model act. Prior to that Rep Cottar proposed set of bills. Drafting for MI legislation by the probate section. Designed to allow conservators and guardians, trustees, practical approaches to dealing with this. Industry is not in favor of this. Not sure if it applies to them. Compromise was reached with UCL. MI legislators are concerned that fiduciaries are subject to terms of service agreement. Most end users don't read the agreements. If our version is adopted wouldn't allow

services providers to bury it in the terms of service. The opt out must be visible. Would allow the principal to restrict the agent's access. For conservators, depends on what the court authorizes. Last weekend probate council adopted and endorsed current bill. Requested that council do the same thing. Service agreements do not currently address incapacity of user.

Jim Steward: the pending bill overrides a provider service agreement. Provides broader protection than current legislation.

Matter 2.2 Spring Conference

Date is set for March 6, 2015 at Inn at St. John. Harley Manela executed all contracts per council vote of Motion to approve by email. The theme this year is the Insiders View. Michael Lebenbom and Robert Anderson are going to speak. Other topics/speakers are tax commission, and estate recovery, attorney general office, administrative things you can't avoid. Judge Mack or Marlinga to speak.

Matter 2.3 Legislative Report

FATA-sticking point dealing with terms of service on line companies. Legislation states any access for fiduciary has to be subject to term of service agreement of provider. Probate section proposal says any limit to access of fiduciary of term of service is void. That will be crux of discussion. Rep cottar clear it's a priority. On house floor. Timeline is tight. If controversy makes it hard to get done. Close election. Depends who shows on Tuesday. Thinks republicans will still control house and senate. Lots of races are really close. Digital asset legislation key. After election their firm will put out a summary of leadership positions.

Matter 2.4 Motion to Approve to Support FATA legislation

Jim Steward moved to approve that the ELDR section support FATA legislation with amendments as proposed by the probate section of the State bar. Seconded by David Sprague. Unanimous approval on roll call vote. No abstentions.

Matter 3.0 Committee Reports

Matter 3.1 SBO trust litigation-Sanford Mall

Complaint was filed Oct 7 in court of claims. Works at its own pace. Oct 30 state filed reply brief. He will post it. Waiting to see if prelim injunction motion will be heard. Council approved funding litigation including initial retainer of Rene Reichiax.

Todd Tennis: in addition to injunction for failure to notify, and questions re policy and getting legislatures behind this. Cottar expressed interest. He worked with David Kerr. Suggested compiling good case stories. Getting rid of this penalizes the well to do. Not useful and a burden on those in the middle class. Highlights from state reply brief. August memo was characterized as a "reminder." Became aware that some eligibility specialized were characterized as exempt. Reminded them it was not policy. They've spent 10-20k in time on this matter so far. Let's assume we win the state case. If successful, it will roll back policy to what it was before memo. Makes application of memo mute. Provide relief to all denials. Agency has to give notice to legislature 30 days notice. If state decides to go past that then we go to federal court.

Matter 3.2 POLST, UPL-Robert Anderson

Abuse of administrative power. State tax commission said the matter must be decided by court of appeals. January 1st, regarding estates. No relief regarding lady bird deeds, subject to uncapping due to law on January 1. If adding son then no uncapping. Great planning opportunities beginning in January. Purely discretionary standard takes care of tax and creditor protection issues. UPL committee: whether social workers are doing UPL if rep nursing homes file for guardianship and file medicaid apps. POLST. Post a state-wide proposition. Amend DNR procedures act.

Matter 4 Legislative Update-Todd Tennis

UAGAPPJA- Probate judges don't like it. UPL and probate section, judges, considering best way to go about it. Not going anywhere. Ther was a hearing, both sides laid out positions. Shumaker, until probate judges and probate section want it then no go. Multi-state guardianship disputes. Or a ward who travels and may need services in another state. probate judges said no major issues. Most states have adopted the uniform act. No commity. Big concern by judges that the protection of the ward will be infringed upon. MI has great protections. Mostly dealing with hypotheticals.

- a) John Payne. Lady came to MI to get surgery. Son got GN wouldn't let her go back home.
- b) Jim Steward. This is a jurisdictional issue. MI has adequate protections.
- c) Todd if this is passed judge mack concerned that someone here would have to go to home state.
- d) Peterman. They could be stuck here without wanting to be here, auto appointment of GAL, statute is where the ward is found.
- e) Kerr. Our judges call the other judges.

Matter 5 New Business

Matter 5.1 Hearts and Flowers Fund-Patrick Bond

Probate council does this. We have a pool of money. \$400 in his IOLTA. Send John Ternes flowers for his funeral. Asked that everyone put in \$25.

Matter 5.2 Chart of Accounts-Patrick Bond

Asked that Sara Schmike adjust the chart of accounts to have all fall conference expenses, including speakers expenses, all included under the annual meeting so the conference committee can budget properly.

Matter 5.3 Motion to approve stipend to Christine Caswell

Motion to approve continuing stipend to Christine Caswell for ELDR section newsletter editorial services by Jill Goodell. David Kerr second. Passed unanimously, except for Christine Caswell abstaining.

Matter 5.4 Motion regarding ELDR Spring 2015 conference

John Payne: Motion to authorize Harley Manela to organize the Spring 2015 Conference, including authorization to spend necessary funds and to sign contracts with the Inn at St. John's and other vendors, and that Mall Malisow & Cooney PC be paid a \$1,500 fee for organizing the Conference. Second by Christine Caswell. Passed unanimously. Only voting member whose vote was not recorded was Lucius. His affirmative vote taken by phone.

Matter 5.5. State Bar Website-David Kerr

People searching for attorneys. Classified by geography. (bond) Benefit? The email conversations will flow by subject. Should not take the place of our listserv.

Matter 5.6 Fall 2015 Conference Committee/Location Exploration Committee - Sara Schimke, Jackie Rygiel, Amanda Murray and Angela Swanberg

Venue. Sprague. Boyne Mtn. Attrition clause, if we reduced numbers by 10% then they could charge us, upped to 20%. 75 rooms blocked now for main nights. Other venues? Sara Schimke and Sprague on location committee. Tree Tops vs. Boyne Mtn. Boyne seems best. Need \$1500 deposit. Sept 29-Oct 2. Concessions. 1:00 pm checkout time. 20% disco spa and waterpark. No setup fees. Cliff Flood to negotiate the contract (Bond).

- i) Mestelle. Moved that venue is boyne. Amended that the \$1500 be paid to Boyne.
- ii) Quardokis. Second.
- iii) Passed unanimously.

Matter 5.7 Fall 2014 Conference Committee - Beth Swagman

Swagman. Stepping down as chair. Listed committee members. Hentkowski (Chair), Sprague, Woods, Mannor, Peterman. Murray. Buhl thanked committee. Mestelle. Ferry ticket for scholarship. Send proof of payment to Sara to process request for reimbursement. Payne: Re: nominating chair of fall conference committee. Law day chair was in officer sequence then they move up in responsibility.

Matter 6 Adjourn

Motion to adjourn by Jill Goodell. Second David Kerr. Meeting adjourned 12:06pm.