

**ELDER LAW AND DISABILITY RIGHTS SECTION
COUNCIL MEETING
STATE BAR OF MICHIGAN**

September 8, 2007

Mall, Malisow & Cooney, P.C.

COUNCIL MEMBERS PRESENT: Roxanne Chang, Priscilla Cheever, Dolores Coulter, Caroline Dellenbusch, Patricia Dudek, Konrad Hittner, Sanford Mall, Arthur Malisow, Harley Manela, Don Rosenberg*, Paul Sturgul*, Brad Vauter*, Kate White*

SECTION MEMBERS PRESENT: Josh Ard, Rosemary Buhl

ALSO PRESENT: Todd Tennis*

*Participated via Conference Call

1. Introductions

The members introduced themselves.

2. Approval of Minutes

Motion was made by Dolores Coulter, and seconded Caroline Dellenbusch to approve the minutes of the August 4, 2007 meeting. Motion carried with no objections, minutes approved.

3. Treasurer's Report

- As of July, 2007, ending balance was \$62,478
- Balance is before dues, so another \$30k-\$40k expected
- Capitol Services is now paid through automatic debit; still owe for August.
- Outstanding amount owed for last year's fall conference is still not resolved fall - approximately \$10k
- Treasurer's report was accepted as presented.

4. Old Business

a. 2007 Fall Conference

- Josh Ard reports finally some information has been upload to section page bar yesterday
- Speculated that registrations were going well.

b. Senior Alert Bill

- Draft comment to Senior Alert Bill reviewed
- Roxanne will expand definition of "vulnerable adult" under the criminal code

- Todd Tennis spoke with Rep. Meadows and he is willing to expand to persons with disabilities
- Motion made provided that definition of “vulnerable adult” be expanded that draft comments will be submitted from section and on section letterhead; Motion carries with no objections.
- Konrad Hittner raises point that there are no directions regarding what to do with the individual one law enforcement finds the individual and need to ensure police use least restrictive response
- Patti Dudek to determine what protocol is now if any for missing persons once found and will provide information to section before next council meeting

5. Committee Reports

a. Elder Abuse Task Force Recommendations

- Committee met via telephone conference call
- Roxanne reviewed suggested comments proposed by committee to the guardianship bills proposed by Rep. Stiles for council’s consideration, including 1.) reporting requirement for guardians regardless of size of estate; 2.) support on submission of inventory by guardians; 3.) support for requirement of court order for lien/mortgage; 4.) clarification of suggested language “readily convertible to cash” to include examples
- Patti disagrees with blanket accounting requirements for guardians who handle any funds/assets for the individual because will be increased burden on guardians, including financial burden; wants two-tiered system wherein reporting would be require upon de minimis amount in estate
- Brad V. explained rationale for blanket accounting requirements; while it is true that this may increase burden and paperwork on guardians and increase in fees, a de minimis requirement of small estate may imply decreased need for protection for individuals with amounts less than small estate when any loss to such estates may result in increased harm.
- Discussion surrounding if there is no de minimis requirement for accounting, must ensure adequate support & assistance for guardians to complete accounting (e.g., guardianship ombudsman, appointment of GAL to assist accounts over de minimis amount, identify funds earmarked for assisting guardians, law schools providing assistance); Priscilla Cheevers to provide more information re: earmarking of funds for assistance
- Also must ensure “accounting” form is as simple as possible such as simple receipts and disbursements form like a check register
- Roxanne to draft comment to reflect position of section

b. ELDRS Litigation Committee

- Don Rosenberg reported Jean Coffey from National Senior Citizen's Law Center and will assist with issue re: treating pre-DRA gift under new DRA law
- Bridget Heffron, Departmental Analyst, Medicaid indicated because state decided to treat pre-DRA under new laws, ask for exceptions appeal (e.g., see emails from Charles Bappert on listserve, Sept 6); the "exceptions" request will all go to her; not clear what this "exceptions appeal" is
- Claim from Bridget Heffron et al that ELDRS never objected to relevant policy; Not true! See comments from ELDRS to Paul Reinhardt and his response to comments
- Paul Sturjel to ask her to draft letter on letterhead that current policy re treatment of pre-DRA gifts is incorrect
- Dolores Coulter suggested draft letter to Paul Reinhart from ELDRS requesting change in policy ASAP and point out ELDRS did comment (and include) and Paul Reinhart wrote back (include) and write PEM for them. Also cc Janet Olszewski & Bridget Heffron; will be drafted and sent for approval via listserve by Sandy Mall.
- Also discussed issue of attorney fees due to the dept's ridiculous decisions

c. UPOAA Committee.

- Josh Ard reported Article 1 has been reviewed but not definitions yet
- One of major battles is requiring acceptance of power of attorney and which powers should be accepted and which ones can be rejected and what procedure if rejected;
- No consensus yet on issue of if form notarized extent of third party reliance & presumption
- If it is going to be said certain forms third party could not object to and must rely on, need to decide what requirements are (e.g., review and drafted by attorney).
- Paul S. suggests authentication requirement (e.g., will)
- Committee will soon move into review of Article 2.

5. New Business

a. Estate Recovery (ER)

- Estate Recovery is looming due to CMS letter & threats of sanctions if no legislation by Sept 30; letter from Janet Olszewski was sent to all members of Senate re: CMS letter.

- Discussion/debate ensued on how best to advocate & respond, including the following considerations:
 - We have made blanket opposition to estate recovery
 - We have spent tons of time on SB 374 individually and made suggestions in good faith - why hasn't it helped? Does not appear suggestions taken seriously into consideration in good faith in taking suggestions
 - Todd Tennis indicated not enough votes to get mandatory estate preservation (EP); enough for voluntary EP but not mandatory - Sen. Deb Cherry doesn't believe enough votes for mandatory; viewed as "tax"
 - Key people identified: Sen. Deb Cherry & Sen. Switalski
 - Todd pointed out this hasn't been top priority (due to, for example, budget crises) but now because of CMS letter, places issue on front burner especially because of September 30 due date.
 - Suggestion to get info about negative effect of ER to anyone to stave off bad result, including congressional delegation & state legislative leaders
 - Should we draft letter we are aware of CMS we oppose estate recovery and highlight areas most egregious?
 - Suggested options for response: 1.) maintain opposition and ratchet up that it is bad policy and shouldn't be passed, and if sanctions so what 2.) drop opposition and make focus efforts on more palatable form of ER; or 3.) combination – state it is bad policy but give suggestions for the best way to do it if proceeding anyway.
 - Brad V. suggested new approach – say we are working WITH the Dept and Legislature to oppose CMS? Sandy points out problem is they do not think we are partners.
 - Patti stated CMS has repeatedly threaten sanctions in past; Engler responded to sanctions & said too bad; also pointed CMS letter says need legislation for ER but not requirement to enact, but enough to give DCH authority to develop ER through rule-making process; no partnership to people who have repeatedly ignored us and proceeded to propose legislation that hurt the people that we protect. So stay the course; we would be taking inconsistent positions to say bad but here is how to fix the "bad" legislation
 - Dolores stated likely enough votes for bill but should continue to work informally and maintain position as council that ER is bad
 - Brad V. believes it would not be disingenuous to say there is wide latitude I implementation of bill while still maintaining position that it is bad policy.
 - Patti stated LTC partnership meeting formed subcommittee on estate recovery at request of P. Reinhart so disingenuous to say the DCH does not want this.

- Sandy pointed out Paul Reinhart said he drafted legislation after researching all 50 states and picked one that “worked”;
- If legislature were to pass legislation that empowered the Dept to implement an estate recovery policy, would technically stave off CMS; if provided administrative powers to enact ER through rule making process, could it be an EP implementation? Can we require that propose legislation to require rule-making process to require EP as ER policy? Todd: may be hard to pass that because still blame that another “tax”
- Sandy proposed we write maintaining integrity and oppose ER and focus on effects; but also note to pass legislation that requires policy of ER program is on that mandates EP? Can we require policymakers to implement EP as an ER program?
- Action Steps:
 - Jim Schuster is drafting communication directly with CMS re: ER and support he continues these efforts
 - Sandy proposed as section to continue to oppose ER is bad & list parade of horrors; but also point out legislation needed to stave off wolves only requires provision of administration powers to implement ER. Caroline Dellenbusch made motion for section letter stating section is opposed to ER, & explain why and negative effects, and reassert appropriateness of mandatory EP as an alternative, Roxanne Chang seconded the motion. 8 voted in favor of motion: 2 opposed. Motion carries. Must be sent out next week. Josh Ard & Todd Tennis to draft letter.

b. Comments on Proposal from Ombudsman Advisory Committee

- Kate White believed proposal rationale was harsh on ELM; not sure if proposed solution would address the problems identified with current ombudsman program
- Comments around state yet? Any way to review comments? Yes.
- What happens after comment period? Committee will get together and review comments after deadline & final decision is Sharon Gire and Janet O.
- Sandy says he believes Citizens for Better Care is doing a good job and would hate to see this dismantled
- Point made that problem in part is that Sarah Slocum is having a hard time controlling and providing instructions to local ombudsman; how ombudsman are supervised and accountability of ombudsman keeps changing.
- Kate White of ELM is going to recommend to ELM board that comments include state needs to hire contractors who the allegiance only to long-term ombudsman. State needs to have ability to sanction if contractor not performing to align the individuals; no issues with

contracting through one entity; current arrangement cannot continue as is. Kate will send position paper to ELDRS council listserv.

- Consensus is no ability to provide comment as a section given short timeframe; but members encouraged to provide feedback privately.

6. Other Business

- a. Confirmed the Social Security appeal letter was sent as a section
- b. Discussed status of Tax Deferment Package for Seniors & Elderly HB 4961. Todd Tennis is checking to see why individuals with disabilities are left out; no hearing scheduled yet
- c. Home improvement credit HB 4900 - public hearing not scheduled yet
- d. Josh Ard posted analysis on annuity and loan policy in PEM to listserv.
- e. Status of Collection of NH tax?
 - Priscilla reported current status – collection of tax will be spread across all nursing homes; legal notice was posted in Lansing State Journal; Rationale was that collection of actual liability would result in closure of several homes who cannot afford to pay the tax right now;
 - Objections were raised by Patti because tax was voluntary and so if the homes cannot pay, then too bad; sharing liability will result in cost to the consumer.

The next meeting is scheduled for **October 11, 2007** at Crystal Mountain. There being no other business the meeting was adjourned.

Minutes Respectfully Submitted by:

Roxanne J. Chang
On Behalf of Amy R. Tripp, Secretary