

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

MINUTES OF SEPTEMBER 6, 2014

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

**ELDER LAW & DISABILITY RIGHTS SECTION
MEETING OF SEPTEMBER 6, 2014**

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Matter One - Introduction

Matter 1.01 Location

Caroline Dellenbusch PLC, 2944 Fuller Avenue NE, Suite 100, Grand Rapids, MI 49505. Meeting convened at 10:00 A.M.

Matter 1.02 Attendance

			Present/Call-in/Absent	
Bassett	Jane	A.	*	C
Bond	Patrick	J.	Vice Chair	C
Buhl	Rosemary	H.	Chair	P
Caswell	Christine		*	P
Fuller	Michele	P.	Treasurer	A
Goodell	Cynthia	Jill	*	P
Kerr	David		*	P
Longstreet	Rob		*	A
Lucius	William	D.	*	A
Mannor	Robert	D.	*	C
Messina	Maria	Rosaria	*	A
Mestelle	Michael	A.	*	P
Payne	John	B.	Secretary	C
Quardokus	Kelly	McNerney	*	P
Schimke	Sara	Ann	*	P
Smith	Christopher	William	*	P
Steward	James	B.	*	A
Swagman	Beth	A.	*	P
Thomas	Erma	S.	*	C
Anderson	Robert	C.		C
Coulter	Dolores	M.		C
Garcia	Darling			C
James-Jura	Kelley			P
Mall	Sanford			C
Muphy	Laurie			C
Rygiel-Sprague	Jacquelyn	A.		C
Schuster	James			C
Sprague	David	D.		C
Sturgul	Paul			C
Tennis	Todd		(Lobbyist)	P
Tripp	Amy	Rombyer		C
Vauter	Brad		Past Chair	C
Westerby	William			C

Matter 1.03 Approval of Minutes

Approved by John Payne. Approval of the minutes for August was moved by Will Lucius and seconded by Jim Steward. The motion passed unanimously.

Matter 1.04 Treasurer's Report – Michele Fuller

The Treasurer reported a balance on hand of \$92,082.00, ahead of last year by \$5,000.00, mostly due to reduction in costs for the Spring Conference. Michele requests that those who are in contact with speakers get W-9s before the conference because she would like to have the checks in hand at the conference. The report was accepted.

Matter Two - Old Business

Matter 2.01 State Tax Commissioner's Complaint – Brad Vauter

There seems to be movement toward resolution and Brad Vauter stated that the matter is not ripe for litigation or other affirmative action.

Matter Three - New Business

Matter 3.01 Adult Protective Services Issues – Brad Vauter

The Auditor General issued a very critical report of APS. DHS's response is to promise to improve record-keeping. Brad says that the problem is that APS has too little funding and too few investigators and suggests that the Section get behind DHS and prepare a position supporting better funding for APS. Brad will draft a position. Michael Mestelle moved that the Council write a letter to the legislature and others requesting better funding of APS. Kelly Quardokus seconded the motion. Brad, Maria Messina and Michael Mestelle will work on developing the position. Passed on voice vote – all in favor.

Matter 3.02 SBO Trust Issue Update

Sandy Mall reported that there is a panel of attorneys working up a litigation plan to procure systemic relief. David Kerr moved that the Elder Law support litigation with \$35,000.00 to contest DHS action related to SBO trust change in policy. The motion states as follows:

I, David Kerr, move that the Elder and Disability Law Section allocate up to \$35,000.00 to be administered and allocated by the Litigation Committee of the Section for supporting consultation and litigation to challenge and reverse the Michigan Department of Human Services denial of Medicaid benefits to applicants whose spouses are benefitted by "solely-for-the-benefit" trusts meeting the criteria set forth in Bridges Eligibility Manual 405.

The Litigation Committee shall consult with an Executive Committee of the Section consisting of Immediate Past Chair, Chair, Chair-Elect, Secretary and Treasurer. The Litigation Committee shall furnish a report at each meeting of the section on its activities in a form designed to keep the section informed, but not in a form which jeopardizes the litigation objectives.

The motion was seconded by Michael Mestelle. It passed on a roll-call vote 14-0, with one abstention.

Rosemary Buhl announced a training on SBO trust issues on September 23, 2014 at the Hannah Community Center in East Lansing. There are some advocacy pieces being circulated. David Kerr drafted letters to the governor and legislators.

Matter Four – Committee Reports

**Matter 4.01 Fall 2015 Conference Committee Location Exploration
Committee - Sara Schimke**

The committee looked at venues including Amway Grand, Crown Plaza (Grand Rapids), Boyne, Treetops, Crystal Mountain, Mission Point, and Bavarian Inn.

Bay Harbor does not have a large enough conference room. Amway Plaza is also off the list. Crown Plaza is off the list due to their financial problems. Homestead's conference rooms are not close enough to one another and the lodging is too far from the conference center for the type of socializing between sessions that is a hallmark of the Fall Conference.

The finalists are Treetops and Boyne Mountain Resort.

Matter 4.02 Fall 2014 Conference Committee - Beth Swagman

Room reservations are up, but registration is somewhat lower than it was last year. Things are going well, except that a few speakers did not meet the deadline for submission of written materials. The Committee will send out an additional email notice to the ELDRS listserv.

Matter 4.03 Litigation Committee - Sandy Mall

Sandy and Rosemary Buhl had a conference call with David Kerr. Sandy, David Kerr, David Shaltz and Rosemary would review requests for litigation support.

John Payne filed in Wayne County Circuit Court for a writ of mandamus to Order Department of Community Health to enforce the nursing home Medicare and Medicaid bed dual-certification requirement. This was dismissed by Judge Murphy as not ripe. Judge Murphy stated that it would be necessary for the plaintiff to bring the matter as an appeal from a negative administrative decision in an involuntary discharge.

Matter 4.04 Other Committees

Matter Five - Legislative Update – Capitol Services, Inc.

The Legislature is coming back next week and will work through September, then adjourn for October.

The UAGPPJA bill is being rewritten on request by Sen. Tonya Schuitmaker, based on discussion with the Alzheimer's Association, probate judges and the Probate Section. A major change would be to clarify that the provisions of UAGPPJA would only apply to cases where there is a multi-state jurisdiction dispute. If the objections are addressed to the objectors' satisfaction, the bill might move forward.

Digital asset legislation is still being considered. The Probate Section is meeting with Rep. Cotter. The ULC has come up with new language and it is possible that the House could move on the bill and it could be passed in the Senate during the lame-duck session.

There is still concern about CMH funding. The state wants to reduce general fund support because ACA may cover much of the general-funds services. The CMHs are working through the funding issues.

James Steward asked CSI whether asking for an amendment to the uncapping bill, HB 5552, would kill the bill. Todd thinks that would not be the result. James Steward offered a motion to support the bill with some changes, but James Steward was not present. John Payne moved that the Council adopt the motion offered by James Steward. The motion is to support HB 5552 with these modifications:

- A) The bill should be made effective January 1, 2014.
- B) In the provisions related to trusts, the term "settlor" be changed wherever that term appears in MCL 211.27a to "transferor," with the possible exception of MCL 211.27a(6)(d)(ii), MCL 211.27a(6)(e)(ii), and MCL 211.27a(6)(u), so that it is clear that the exemption from the transfer law is based on the relationship of the distributee or new beneficiary of the trust to the prior "sole beneficiary."

The motion was seconded by Michael Mestelle. It passed on a roll-call vote, 14-0, with six not voting.

Matter Six – Announcements

Rosemary Buhl mentioned that there are several Councilors whose terms are ending. The nomination committee will be meeting and would like to know who is interested in continuing on the Council and who would be interested in being appointed to the Council.

David Kerr offered comments on the effect of the Affordable Care Act on patient care. He is working on a paper describing the problems.

Matter Seven – Future Meetings & Adjourn

Jill Goodell moved to adjourn. Christine Caswell seconded. Next Council meeting:

7:30 a.m., October 3, 2014 at Mission Point Resort, Mackinac Island, MI 49757 (Annual Meeting).