

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

PROPOSED MINUTES OF SEPTEMBER 12, 2015

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

Matter One - Introduction

Matter 1.0 Location

2944 Fuller Ave NE Ste 100, Grand Rapids, Michigan. Meeting convened at 10:00 a.m.

Matter 1.2 Attendance

- **Council members present:** Patrick Bond, Jill Goodell, David Kerr, Michael Mestelle, Kelly Quardokus, Beth Swagman.
- **Section members present:** none
- **Non-section members present:** Todd Tennis, Jean Doss
- **Council members on phone:** Michele Fuller, Rosemary Buhl, Christine Caswell, Howard Collens, Angela Hentkowski, Bob Mannor, Maria Messina, John Payne, Sara Schimke, Christopher Smith, Erma Thomas
- **Section members on phone:** Amy Peterman, Patricia Dudek, Caroline Dellenbusch, Paul Sturgul, Krystal Casey Danielak, Dolores Coulter, Dan Kosmowski, Julie McCowan
- **Non-section members on phone:** none

Matter 1.3 Approval of Minutes

Approval of the minutes for August 2015 was moved by John Payne. Seconded by David Kerr. The motion passed unopposed.

Matter 1.4 Treasurer's Report – Sara Schimke

Matter Two - Old and New Business

Matter 2.1 FADA legislation: Howard Collens

New version of legislation incorporates suggestions. Prioritizes people who do planning, allows people to get information about the catalog and the content. Also incorporates on-line tools and gives priority to people who use those systems. He is asking the council to endorse the new version of FADA so the legislative process can be reinvigorated.

MOTION-Collens: Motion to support the revised FADA as proposed by the Michigan law committee.

Second by John Payne

Passes unanimously by roll call vote, no abstentions, 3 absent

Matter 2.2 Fall Conference 2015: Hentkowski

Thinks we will have 135 registered so far.

ICLE said about 250 attended-mostly newbies-over half were under 5 years of practice-most not elder law attorneys-25% said they were elder law attorneys-mostly "other."

We may be getting someone from the state to come talk to us. Forlini is confirmed.

Working on another legislator. 18 scholarships awarded. Asked people to share rooms.

Email her to introduce speakers. Discussion of approval of expense for scholarships.

MOTION-Hentkowski: Motion to approve the scholarship expenditures in the amount of \$10,000-11,000

Mannor-Seconded

Passes unanimously, one abstention

Matter 2.3 Nominating Committee: Bond



Committee consisted of Payne, Buhl and Bond. The committee nominated Christ Smith to become Treasurer and Jackie Sprague new council member.

MOTION-Quardokus: Motion to adopt recommendations of the committee

Kerr seconded

Passes unanimously


Matter 2.4 Legislative Report: Todd Tennis

House has vacancies-one expelled and one resigned. AG is investigating. Rep Courser still has privileges as a former member since he resigned.

Transportation funding has been a hot topic. Talking about shifting funds from the general fund-may impact funding for various ELDR services.

New medicaid director-strategic planning for governor as background. Well respected.

Rep Leonard-revised Kevin's law. Aimed at giving more ability to commit someone before they become a danger to themselves or others. Rep. offered bill that makes changes and may be coming up in the committee. He wants to make sure it doesn't infringe on civil rights and liberties. Up for discussion in the next few weeks. Payne is in support of this bill as well. Dudek said the issue is that people don't bring petitions based on this law, and there is difficulty in enforcement. Dudek gave an example of how this is used.

Legislation to allow DHHS workers to have limited police powers and carry firearms. For inspectors investigating welfare fraud.  Matter 2.5 Letter to Nursing Homes-Anderson

Bob Anderson drafted a sample letter to nursing homes. Jim Steward agreed the concept is good and protects the consumer and suggested that the letter drafted by Anderson should bear additional review for tone. Pat Bond agreed to revisit the issue next agenda and revised to make it more consumer protection oriented.

MOTION-Payne: Motion that we oppose the two bills. 

Mannor second.

Passes unanimously by roll call vote. One abstention. Five absent.

New bill-long term care partnership insurance. Already went to committee. Long term care insurance policies cover most of the expenses and can be supplemented by Medicaid without asset declarations. Requires certain disclosures. He circulated detailed analysis to the council. Dudek said she was on committee and when this initially circulated there was no estate recovery. This is very favorable for our clients. Discussion of use in other states-methods and availability for clients.

MOTION-Kerr: Motion to support HB 46 to create long term care partnership.
Swagman second
Motion passes by roll call vote.

Bill pending regarding caregivers being able to direct care and make decisions. AARP also involved in this legislation. This is in front of committee.

Dept of HS-had an office helping individuals who had denials for SSI and handling appeals. As part of the merger this office is being closed. Allows the department to contract with legal services to get paid to do this. The requirement to contract went away and they were doing it "in house." No one on the call knew about this existing.

ABLE act passed house. Reported to Senate committee in June. Expected to go to vote any day.

Three issues: budget issues CMH's being cut for people in spend-down process and wouldn't be covered by expanded medicaid. This has exploded beyond initial concerns. CMH agencies won't provide services unless they are on Medicaid. This is contrary to state law. Secondary issue is that in the implementation they threw off all the DAC beneficiaries from Medicaid without notice, or even if notified didn't appeal and all were terminated from services. Dudek had an ALJ find they wouldn't reinstate during the appeal period. There's interest from Schimke and LePine legislators that are interested in clarifying the law to protect people, income not countable in terms of determining eligibility. Income should be disregarded. Protection for people with DAC benefits. DAC's are exempt from the spend-down per BEMs. Dudek is asking for council support and work with legislators, perhaps form a committee for it. Schimke filed a brief in her case, DHS filed a motion for summary disposition. Hirschel's office was just made the ombudsman for MI Health.

SN Fairness Act. Federal legislation passed the Senate unanimously. Allows an individual to create their own d4A. Now in front of the House. We need to contact our federal reps and let them know they need to support the act. HR 670.

MOTION-Kerr-that our council support HR 670 and send a letter to our Congressional representatives.
Payne: second
Passed unanimously

Matter 2.5 Ketchum Amicus Brief: Amy Peterman

State requested permission to file a response to our Amicus brief. We will file a reply to their response pending permission from Ct of Appeals and participate in oral argument.

MOTION via email- Jim Steward: Motion that Council approve Amy Peterman's request for up to an additional \$2,500 of attorney fees for the filing of a motion (or other request) to permit the filing of a supplemental or amended brief (and also request participation in oral argument, if not already covered by prior filings).

Second Christine Caswell


A quorum, under Article VI Section 4, was present for the vote. And the motion to pay Amy Peterman another \$2,500 regarding the Ketchum matter has passed.

Out of 19 members (Bond being the 20th), 12 voted to approve the motion. Three abstained. One voted no. And three have not voted yet (Bassett, Mestelle, Schimke). Motion passes.

Additional discussion. Amicus briefs policy: Kerr

Sent copy of probate section policy on amicus briefs to council. Increased pay to \$10k from \$5k. Probate section doesn't file in federal cases unless it involves Michigan law.

We do. They aren't filing unless the court of appeals has a published opinion. They have a committee and application. In our cases we are able to take action more immediately.

There are additional policy questions to consider regarding oral arguments. Probate section doesn't have a litigation committee. We do file lawsuits. 

Matter Three-Committee Reports

Matter 3.1 2016 Fall Conference Venue Committee – Sara Schimke

Need direction from council so we can announce it at the fall conference as tradition.

Attendance is solid despite ICLE. Payne moves that we schedule it at Crystal Mountain.

Schimke: they have renovated the conference rooms. Upgraded wifi. Swagman-we may have outgrown the conference space. Discussion of other optional venues and dates.

Dudek requested that we check for conflicts with Jewish holidays. Discussion of moving the big destination conference to spring.

MOTION-Mannor: schedule fall conference Oct 12-14, 2016. Ask Sara to narrow down facilities.

Mestelle seconded.

Mannor amended Motion to Oct 5-7, 2016

Payne: second

and allow up to 1k for deposit.

Three opposed.

Motion passes.

Matter Four: Next Meeting and Adjournment

Next Meeting will be Friday, October 2, 2015 at the Fall conference at Boyne Mountain. Time will be early in the morning.

MOTION-Bond: Motion to adjourn.

Seconded by Beth Swagman.

Motion passed unanimously.
Meeting adjourned at 12:34 p.m.