

**Elder Law and Disability Rights Section Council Meeting
State Bar of Michigan
306 Townsend Street
Lansing, MI**

**February 7, 2009
10:00 am-12:00 pm (est)**

1. Introductions:

Amy Tripp read roll call. Those present were Amy Tripp, Caroline Dellenbusch, Rosemary Buhl, Konrad Hittner, Priscilla Cheever, Michele Fuller, Patricia MacKinnon, Delores Coulter, Ellen Hoekstra, David Schultz, J. David Kerr, Kevin Cotter, Jill Goodell, and Josh Ard. Those present via telephone were Don Rosenberg, Paul Sturgul, Harley Manilla, John Payne, Roxanne Chang, Art Malisow, Susan Wideman, Bob Anderson, Jackie Ridell, Ward Wilson, and Sandy Mall.

2. Approval of Minutes:

Motion by Don Rosenberg and seconded by Caroline Dellenbusch to approve the January minutes. Motion passed.

3. Treasurer=s Report:

Caroline reported that we do not have any current information from the State Bar on our treasurer=s report. (As of November 30, 2008, we had \$101,984.39). The homestead bill has been paid for the Fall Conference.

4. Committee Reports:

a. Litigation Committee

Bob Anderson, Chairperson, discussed the progress of the litigation committee. A meeting was held on Friday January 23, 2009, at which both Rene Reixach and Ron Landsman were present via telephone. The committee decided that it would focus on the issue of pre-eligibility medical expenses; i.e., adjusting the individual=s patient pay amount to pay for past medical expenses. This is an important issue because often the past due medical expenses are the result of no fault by the Medicaid applicant and create an enormous fear of anxiety for the unpaid medical bills and of being evicted from the nursing home. Rene Reixach, who is a premiere Federal Litigator on Medicaid Issues, from Rochester, New York, has agreed to assist the litigation committee and the Michigan Elder Law and Disability Rights Council to file a Section 1983 Class Action Law Suit. In the event the council decides to retain Rene=s services, he would ask for a \$30,000 retainer, against which he would bill \$310.00 per hour plus expenses. In

the event that Rene would be working with other counsel, his fee would be approximately \$12,000. Bob discussed the issues involved in a Class Action Law Suit including numerosity, getting 40 cases where the State has refused to adjust the patient account to pay for past due medical expenses. Attorneys Patrick Bond and Sandy Moll have not had success in getting Logan Dreiskey of the State Department of Community Health to adjust the patient pay amount for past due medical expenses. Sandy Moll noted that the council must first check with the State Bar to see if we can finance a Class Action Law Suit of this nature without State Bar approval beyond our council.

Motion was made by Rosemary Buhl, seconded by Priscilla Cheever, to allocate \$30,000 for the services of Rene Reixach for financing a Class Action Law Suit against the Department of Community Health for the purpose of establishing State policy in conformity to permit the patient pay amount to be adjusted for past due medical expenses, including long term nursing home expenses. The fee would be paid either directly to Rene Reixach or with co-counsel. Motion carried by voice mail, with John Payne abstaining.

b. POLST Committee: (Physician Orders for Life Sustaining Treatment)

Bob Anderson discussed this issue. Bob has met with the head of the Michigan Medical Society who supports us. Bob would like to see this procedure implemented throughout the State.

5. Old Business:

a. 2008 Fall Conference:

As previously noted, Caroline Dellenbusch reported that the Homestead bill has been paid.

b. 2009 Spring Conference:

Harley announced the up-coming Spring Conference. Harley and Ellen Hoekstra have obtained a guest speaker and that is the new Chief Justice of the Michigan Supreme Court.

c. 2009 Fall Conference:

Amy has been attempting to obtain the services of Robert Fleming who is a nationally known Elder Advocate from Tucson Arizona. Robert's fee would be \$4,000 plus traveling expenses. In the event that Robert is agreeable to speaking at the conference, Amy would like to have him speak at least at 2 general sessions as well as some round table and/or workshops. Amy heard Robert Fleming speak at the Probate Institute and enjoyed his presentation very much as did others who

heard him. Susan Wideman suggested that we consider taping and/or video taping at least one of Robert=s sessions and noted that we have done this for Elder Law for Yoopers Group in Marquette, MI., and that it is not expensive to do so. Motion was made by Caroline Dellenbusch and seconded by Konrad Hittner to allow up to \$6,000 to be allocated to invite Robert Fleming to speak at the Fall Conference, subject to Brad Geller=s input (Brad is in charge of the Fall Conference).

d. Database for ALJ Decisions:

Brad Vauter was not present so this matter was not discussed.

6. New Business:

a. Policy re: Charitable requests:

Postponed due to another meeting.

b. Legislative Issue re: Funeral arrangements:

Postponed due to another meeting.

c. DHS Policy re: reconsideration and rehearings:

David Shaltz discussed the new policy on reconsideration by the department following fair hearing. David is concerned that the proposal on reconsideration may result in more Circuit Court appeals. Motion was made by Delores Coulter, seconded by Paul Sturgul to support Dave Shaltz= efforts to have the State reconsider it=s proposed policy change. David will provide the council members with his letter to the Department along with any supporting documents.

d. Nursing Home Contracts:

Roxanne Chang has been appointed to a sub-committee to discuss model nursing home admission contracts. Also, members include Patti Dudek, Brad Geller and Josh Ard. Roxanne has invited other council members and bar members to be part of her committee. Roxanne will report back to the council on her progress on developing a model nursing home admission agreement. She has been in contact with Eric Carlson of the Nation Senior Citizens Law Center on this issue.

7. Legislative Update: Capitol Services:

Ellen Hoekstra presented the Capitol Services report. Much of the discussion again

centered around the renewed Blue Cross/Blue Shield proposed legislation. Also discussion of Estate Recovery. Nothing has happened at the Federal level regarding Estate Recovery because the meeting that was scheduled in early January in Chicago has been postponed by CMS and has not been rescheduled. Per Ellen=s report, Ellen noted that as part of the Atax increase deal@ at the end of 2007 there was an agreement for a legislative commission on efficiencies in State and local government-one of the commission work groups was the DCH/Medicaid work group which recommended an expansion of estate recovery in Michigan to generate Amuch greater savings@. The commission is expected to have a hearing on those proposals on March 2, 2009 at 2 pm in Lansing-this is a public meeting at which comments can be made.

Meeting adjourned at 12 pm est

NEXT MEETING: March 7, 2009 at 10 am est at Barron Rosenberg Mayoras & Mayoras PC, 1301 West Long Lake Road, Suite 340, Troy, MI 48098 (248) 641-7070

Conference call number: 800-270-1153; Participant Code: 123910

Respectfully submitted

Paul A. Sturgul
Secretary

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PAUL/TIME/Elder.dis-rts.MI 2-7-09