

## Elder Law and Disability Rights Section Meeting minutes

October 1, 2011, Law Office of Caroline Dellenbusch & Beth Swagman

Present in person : Jill Goodell\*, Todd Tennis (Capitol Services), Beth Swagman\*, Rosemary Buhl\*, Rachel Zapczynski, Christopher Smith\*, Brad Vauter\*, Michael Mestelle\*, Kelly Quardokus\*, Dolores Coulter, Caroline Dellenbusch\*, Rob Longstreet\*.

Present via telephone: John Payne\*, Ellen Hoesktra (Capitol Services) , Amy Tripp, Michele Fuller\*, David Kerr\*, Jackie Rygiel, Sara Schimke\*, Art Malisow\*, Angela Swanberg, Christine Caswell, Judy McFalda, Pat Bond\*, David Sprague, Bob Anderson, Harley Manela\*.

\*Indicates voting council members.

1. Meeting began at 10:00 am. Introductions were made for those present, and via telephone.
2. The August meeting minutes were approved. Motion made by Rosemary Buhl, Seconded by Michael Mestelle.
3. The Treasurer's report was received. As of August 31<sup>st</sup>, the Section has on hand \$102,204.30. An additional \$10,000 was received from attorney Bill Goodman's office as a reimbursement of our legal fees from the PEME. That amount is not reflected in the August 31<sup>st</sup> balance.
4. Legislative Update (For complete analysis of the legislation, please see September and October Legislative Reports prepared by Capitol Services)
  - a. Discussion was held regarding status of Vulnerable Adult Package – hearings held this week. 3 of the bills were reported out of committee— 454,455,459. Also added SB 706—which prohibits insurance from claiming senior specific certification. Several council members attended the hearing.
    - i. SB 467 & 458—Regulation of Annuity Sales Legislation. Motion was made by John Payne to support Legislation, Seconded by Brad Vauter. Vote was held, and passed unanimously.
    - ii. SB 706—Use of Senior Specific Designations—Motion was made by John Payne to support the legislation, seconded by Michael Mestelle. Discussion was held regarding Certified Senior Advisors and the scope of this legislation. Vote was unanimous in support.
    - iii. SB 454 (Video taped testimony of vulnerable adult), SB 455 (Penalties for Fraud), SB 465 (Penalties for Crimes against vulnerable Adult), SB 459 ( Fraud & Obtaining signatures), SB 466 (Senior Alert), SB 468 (To Not require signature of victim). Motion was made by Brad Vauter in support of all of the above legislation.

Seconded by Kelly Quardokus. Discussion was held stating that several of these were already out of committee and were going to be moving fast prior to our next meeting. Vote was held, passed unanimously.

- b. DCH Peace of Mind Registry—Goal—create easier database for Advance directives. This is being supported by the Gift of Life movement. At this time DCH wants our informal comments regarding the draft. Comments are to be emailed to Caroline or Rosemary to be compiled. Conversation continued... Disposition of remains would be a good newsletter article.
  - c. Licensure of Home Health Agencies SB 221. Motion made by Beth Swagman in support of this legislation, seconded by Kelly Quardokus. Vote held, passed unanimously.
  - d. Estate Recovery—Discussion by Todd & Ellen about history of 2007 vote. Current suggestion is to keep letters in opposition coming. No New draft received yet. Plan of action:
    - i. Most updated information regarding what other states have for Estate Recovery. Similarities and differences, impact on collection, administration costs.
    - ii. 1 page on why & how DRA has reduced the ability of wealthy people to get LTC and between 2007 and now, less rich people on MA.
    - iii. Liens—
      - 1. What other states don't include liens
      - 2. Modification on younger disabled age limits
      - 3. Legal hotline has had interns working on the project of gathering comprehensive information. John Payne has also been gathering info, between both have approx.. 20 states. Discussion was held regarding a FOIA requests. Brad & John to coordinate. Motion was made by John Payne to earmark up to \$5,000 for FOIA requests, Seconded by Rosemary Buhl. Discussion was held, concern was expressed over the amount of money, amendment suggested reducing the amount of \$2500. Both John & Rosemary Agreed. Vote was held, passed unanimously.
  - e. No Fault HB 4936. Legislation has been introduced to eliminate the lifetime medical benefits. There is a coalition fighting this. Holding informational meeting. Motion made by Brad Vauter to oppose this legislation. Seconded by Art Malisow. Vote held, passed unanimously to oppose this legislation.
5. Old Business
- a. Estate Recovery—discussion held during legislative update.

- b. Fall Conference 2011 & 2012—discussion was held regarding several concerns that were received by council members from attendees. Overall agreement that conference had great topics and speakers, could be strengthened with more assistance given to Brad Gellar on details. Chair Caroline Dellenbusch established a committee to work with Brad on the fall 2012 conference. Plans were made to create a survey and a “save the date” for next year.
    - i. Motion was made by Jill Goodell, and seconded by Kelly Quardokus to accept Brad Gellar’s proposal for holding the 2012 fall conference at Crystal Mountain in the 1<sup>st</sup> week of October. Vote was unanimous.
  - c. Spring Conference—Harley Manela stated that the conference is scheduled for Friday March 16, 2012 at the Inn at Saint John’s in Plymouth. The tentative plan is to have the March Section meeting held the following day. (March 17, 2012).
    - i. Tentative Topics include: Judge Mack—end of life decisions & guardianship authority; administrative law speaker regarding appeals; health care reform; Medicaid Panel; Marketing/Office Management; Preventing Malpractice. Lunch speaker to be Mike Stone MI department of Veteran’s Affairs.
    - ii. Materials to be provided via email or for \$50 more in hard copy.
  - d. Section Newsletter—John Payne & Christine Caswell. Next newsletter to come out in November. Articles to be submitted to Christine no later than October 25<sup>th</sup>.
  - e. BEM 405 Pooled Trusts—Michele Fuller—it is believed that an appropriate plaintiff has been secured, but are not yet ready to file. It is anticipated that it will be filed prior to the November Council meeting.
6. New Business
- a. Bylaws—Brad V. lead a discussion on an amendment to the current bylaws to allow for email or telephone voting in between scheduled meetings. Josh Ard has submitted a petition which needs the support of 10 section members to be considered. 10 votes have not yet been tallied. Once the votes are reached, the proposed amendment must be published in the newsletter, then can be voted upon after 30 days have elapsed since publication. A discussion was held to consider the establishment of a bylaw committee. Brad V. to review for an upcoming meeting.
  - b. Database of Administrative Decisions—Brad V. explained how the Legal Hotline has gathered a number of decisions, but it is not comprehensive. Chris Smith offered to assist. A discussion was held on the potential need for section financial support for FOIA requests, but no motion was made.

## 7. Committee Reports

- a. POLST—Bob Anderson discussed the recommendations the members of the POLST committee have at this point. The recommendations are as follows:
  - i. That the Patient's signature or that of any representative on the Form be optional.
  - ii. Delete the community DNR option from the POLST Form in order to avoid the cumbersome formality requirements of the Michigan DNR Procedures Act and that the statutory community DNR form be used separately
  - iii. That the physician who signs the form and professional facilitator who helps fill out the form apply the clear and convincing evidence test of patient preferences as required by the Supreme Court's *In Re: Martin* decision and that requirement be inserted into the POLST Guide.
  - iv. That the Task Force print a draft form reflecting these proposals so that all interested persons can more easily consider these ideas.
    1. Motion was made by Rosemary Buhl to support these recommendations as a section. Seconded by Brad Vauter. Discussion was held. Concerns were expressed regarding the clear and convincing standard language. An amendment was suggested to omit #3, which Rosemary Buhl and Brad Vauter both agreed to. Vote was held and was unanimous in support.
- b. Litigation Committee—discussion was held regarding a need for budget and guidelines regarding priorities of litigation.
- c. Health Care Reform Committee—no new developments.
- d. Legislative Committee—Brad V. – discussed during Legislative report
- e. Newsletter—previously discussed
- f. Unauthorized practice of Law—Bob Anderson—project was discussed to find a lead person to organize people to attend seminars which suggest that they are engaging in the unauthorized practice of law. Kelly Quardokus volunteered. Kelly and Bob are to coordinate how to provide direction on the list serv. Amy Tripp added to the discussion saying that the *Dressel v. Ameribank* decision is very negative and that the State Bar Committee does not seem to be changing this decision.
- g. SCAO probate forms—Rosemary Buhl attended the annual meeting on September 1<sup>st</sup> representing the section. The changes to the forms tend to make the forms more clear to those who are unrepresented by counsel.

Motion by Jill Goodell to adjourn meeting. Seconded by Kelly Quardokus, passed unanimously.

Meeting ended at 12:22pm

Submitted by Rosemary H. Buhl

Next meeting November 5, 2011 at Chalgian & Tripp Law Offices