

MINNESOTA STATE BAR ASSOCIATION
Elder Law Section Governing Council
Meeting Minutes

Date: December 17, 2010

Council Members Present: Dan Steinhagen, Vicki Ahl, Paulette Joyer, Janet Totter, Laura Zydchnech, Julian Zweber, John Kantke, Laura Orr, Jennifer Wright, Marjorie Austin, Tom O'Connell (ex officio), Cathryn Reher, Stuart Bear, Sally Mortenson, Sue Sandahl, Dick Hawk, Pook Grathwol, Suzy Scheller, Stuart Duering (ex officio).

Present by phone: Elyse Farnsworth, Peter Hendricks, Vicki McIntyre, Lori Skibbie, Mark Anderson, Bob Russell, Sarah Rowley, Ken LaBore (Listed members had indicated their intention to attend by phone, but were unable to do so due to technical difficulties with the conference call-in.)

Excused Absences: Kathy Eveslage, Adam Heuett (student member), Jennifer Lammers, Sarah Leonard (student member), Adam Rohne (student member), Joel Smith

Unexcused Absences: Joel Button, Laurie Hanson (ex officio), Kristine Mullman, Ruthanne Vos (student member)

MSBA Staff: Elyse Farnsworth

- 1. Call to Order:** The Governing Council of the Elder Law Section of the Minnesota State Bar Association met on December 17, 2010, at Monroe Village, 1900 Central Avenue, Minneapolis, Minnesota. The meeting was called to order at 3:45 p.m. by Chair, Jennifer Wright.
- 2. Approval of Agenda:** The agenda was approved as submitted.
- 3. Approval of October 8, 2010 Council Meeting Minutes:** Upon motion duly made and seconded, the minutes from the October 8, 2010, meeting of the Governing Council were approved as submitted.
- 4. Treasurer's Report:** Upon motion duly made and seconded, the Treasurer's Report for the period ending October 31, 2010, was discussed and accepted.
- 5. Committee Reports**

5.1. MSBA Assembly Representative [Lori Skibbie]

Lori provided a synopsis from December 10th assembly meeting. An amendment to MSBA bylaws was addressed regarding legislation, amicus briefs, etc. The sticking point in the amendment was a 5-day waiting period for committees to submit proposed legislation or amicus briefs, certified to the president. Once the waiting period provision

was taken out, the amendment was passed by the governance committee and then by the assembly.

Approval generally must be obtained a year in advance in order to be part of MSBA's legislative agenda. The Section can take an independent position, but it has to be run by MSBA in order to avoid conflict, and it may not be possible to receive assistance from the bar's lobbyist. The timing and deadline issues make it difficult to initiate or respond to things during the legislative process which often requires fast action. The lobbyist's time for this year's session has already been allocated, with the primary focus being preventing imposition of a sales tax on legal services.

MSBA's internal lobbyist (Brian Lake) will assist with section initiations; however, it's unclear whether that assistance is available unless the initiative is part of the MSBA agenda. Once a section's position is passed by the MSBA assembly, it stays on the agenda for 6 years unless passed or the section asks to pull it. A section position has to be submitted and certified to the MSBA president in advance.

Lori also reported that nominations are being considered for 5 different assembly boards. If interested, please contact Lori.

5.2. Legislative

[Julian Zweber] (See report, attached)

Julian reported that with turnover of the majority (from Democrat to Republican), and uncertainty as Governor Dayton begins organizing his administration, much remains up in the air. The MSBA website does not have the current legislative agenda posted, and Elyse will follow up on the status of posting.

Estate recovery is just a mess, and there are some budget neutral issues that could make a difference, e.g. where state law clearly violates federal law. Input from other sections would be helpful. There's an advantage in the shake-up – new governor/new commissioner, etc. The issues cut across party lines, and are just matters of fairness. Julian plans to work jointly with Real Property/Probate and Trust Sections who are concerned about the same things. It may be possible to get some of these issues into the bar agenda for next year. There was a discussion about having all 3 sections meet with the new DHS Commissioner. Elyse is going to check into whether there is any limitation on administrative advocacy by the section, or whether that would require bar approval.

Anyone interested in working on legislative matters should contact Julian. Also, contact Julian with any issues to put forward in next year's session – the deadline will be the last Friday in October.

5.3. Medicaid State Plan

[Stuart Duering and Tom O'Connell]

The Medicaid State Plan Committee was established by vote of the governing council at the October 8, 2010 meeting. The objective is to have a system in place to track, and comment on, proposed state plan amendments, and to develop a more collaborative relationship with state. Stuart and Tom will co-chair the committee. They are waiting for some information, and will then try to meet with contacts at DHS. Without taking positions, they plan to advocate for more access to information online, including state agency decisions and policy decisions. Section members with an elder law focus are encouraged to join this committee and assist with this critical effort.

5.4. Medical Assistance

[Cathryn Reher]

Cathryn reported that we have recently learned of 160-180 hours of training that all county staff are required to attend, and we are beginning to see results of that training in feedback from caseworkers. It is unclear what policy information is being disseminated without access to the training materials. Kim Dayton has offered to do a FDPA request, but Cathryn is wondering if it would be worth paying someone to obtain that information. The concern is how policy is being portrayed and whether it is accurate (e.g., rule-making). Caseworkers are responding with inaccurate policy interpretations strongly based on the training. Because these are internal training materials, they are not a public document. It's also unclear under MOE's how much of the training should be enforceable (violating federal law). Laura Orr indicates that she interned at DHS and has some contacts; she will explore that option. We may want to approach the new commissioner about the need for information to put on a CLE for attorneys who work with caseworkers. If a request for funds to obtain DHS materials is required, Cathryn will submit a specific proposal with a cost estimate to the council. The issue will be put on the agenda for the next council meeting to follow up.

5.5. Communications

[Marjorie Austin] (See committee report, attached)

Marjorie provided a written report. A sign-up sheet was circulated at the last meeting for each member to take responsibility for a particular month's articles. There has been some difficulty in getting materials to Marjorie in a timely manner, so the deadline for newsletter submissions has been changed to 5 p.m. on Saturdays.

The next Communications Committee meeting will be held on Monday January 10th at noon. Council members are encouraged to submit information of interest, regardless of length. There is strong consensus that the weekly e-newsletter is the most valuable service we provide for section members.

6. New Business:

- 6.1. Jennifer asked all council members to review the previous section survey in order to prepare the planned re-survey. We will be using a similar format for comparability, but everyone should review the previous survey and provide Jennifer with suggestions for

additions/changes. The new survey will be disseminated via the e-newsletter before next council meeting, so council members should provide information to Jennifer before the end of January.

- 6.2. Paulette reported that Nancy Hupp with MSBA has disseminated information to section members via e-mail encouraging the submission of materials for the Practicelaw.org website. The link from Nancy makes it easy to contribute forms, checklists, etc.
- 6.3. Laura Orr reported that the Serving Our Seniors Project through the New Lawyers section. There is a link on the ABA website that provides more information about this initiative to provide simple wills for seniors. There is some initial training for participants provided by the ABA; however, some members of the New Lawyers section have expressed concern about feeling prepared following the one hour video training. There was considerable discussion about whether there is really such a thing as a “simple will” without addressing broader issues. The consensus is that some form of mentoring relationship with experienced lawyers would be appropriate.

Adjourn. The meeting was adjourned at 5:08 p.m.

Respectfully submitted:

Laura Zdychnec, Secretary

The next meeting of the Governing Council will be held on February 18, 2011

2011 MEETING SCHEDULE

Friday, February 18, 2011 – 3:30 – Monroe Village

Friday, April 22, 2011 – 3:30 – Monroe Village

June 2011 meeting will be with the Section Annual Meeting - TBA

Call-In Instructions: Call: 1-800-406-9170	Enter Participant Code: 2637797
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