

**Minnesota State Bar Association
Elder Law Section
Governing Council
Minutes of October 10, 2008 Meeting**

1. Call to Order

The Governing Council of the Elder Law Section of the Minnesota State Bar Association met at 3:30 p.m. on October 10, 2008.

2. Approval of Last Council Meeting Minutes

The minutes of the August 8, 2008 meeting of the Council were reviewed and approved without amendment.

3. Treasurer's Report

Vicki - Over budget by about \$8,800. Mostly because of law clerk – it cost more than had been budgeted. Discussion of how much the E-Newsletter costs. Move to approve the acceptance of the budget. Budget report approved. \$11,752 in budget.

4. E-Newsletter Report

Laurie - Met on Sept 15, 2008. Committee of 10 members and 8 were there. Part of the meeting was to come up with a mission. The mission is: “to keep the elder law section of the bar...” If you want to be a member of the committee, you must submit twice a year. At the meeting, the committee also discussed whether you have to be an EL section member in order to get a copy of the newsletter or if it should be sent out to other sections.

The committee will be sending out a survey about the newsletter. If you have any questions you want included in the survey, please let Laurie Hanson know. The committee will need an editor starting next July when Vicki takes over as Chair of the Section. The time commitment is usually a couple of hours a week, but can be more. She can usually sit down on a Saturday and get it done quickly.

Jeff – talked earlier about disseminating the newsletter to other sections. Not this past week, but before the Institute, the newsletter was sent to the Probate and Trust Law Section. The Probate and Trust Law Section should have received the newsletter with permission of the chair. We should see the reaction. It was easy to do. A couple of emails was all it took to do it. So far, no feedback was given.

5. Project Description: Identification of all the Types of Facilities and the Standards and Eligibility for each.

Ken – The research he is doing is on elder Abuse and neglect cases. On the first page of the packet, there is an overview where the different types of cases are identified. TOC gives more detailed information about any one of the subcategories.

Suzie from Ken’s office – They would like feedback on format and content. A lot of placeholders are used in every category. If you have information to fill in the placeholder categories, please contact either Ken or Suzie. On the overview page, a lot of the information is statutorily based. They intentionally used the legislative language because that is the foundation of what kind of services are going to be offered in that home.

Julian asked if they were getting financial support. No, they are just doing it because it was needed.

Ken - Some of the feedback they are looking for would be as the result of running the packet past the staff support in the legislature - have experts on the licensing. One goal is to identify loopholes in the law. They are also trying to figure out the statutory standard of care in each facility. There is some confusion to the general public as to what you are buying when you enter one of these facilities.

Julian - Perhaps there would be financial assistance from the AG’s office for this project.

Ken - The goal is to get the information together. The packet will not be user friendly for the general public, but would they would like to modify it so that the general public will be able to use it. The addendum is simply a registration.

Julian - Might want to check with Care Options Network to see if this is the kind of thing that they would be interested in publishing. This could be something that the facilities might be interested in buying.

Laurie – CEJP may be able to give student assistance to help put this book together and do the research.

Jeff – EL section ought to try and contribute what we can in some way. Not sure how to do that in a formal governing committee kind of manner.

Ken - They would like to see the section members work on the eligibility sections because they don’t understand them. It is possible that someone might have really researched one particular part or if they missed a facility. Decide which is the right facility, maybe in part on how it is paid for; then how it is paid for affects the regulatory aspects of it.

Julian – what is the timeline? Ken - 30 to 60 days.

Jeff – Are there volunteers who would like to jump on and help him? Prepare something for the newsletter to ask for volunteers to research the project. Julian - There are students who are working on research projects. They have to figure out what to research on. Talk to Kim Dayton and ask if there are students looking for research to do. Kathy – Aisha probably has information. Laurie – Anne Quincy and people who do public benefits for people will probably have this information.

Cathryn – are you looking for lists? Are you being list specific? Ken - No, identifying types of facilities – what are you getting on these different levels? Cards left up front with emails and contact information. Will follow up to see how it has evolved. Laurie – should the Strategic Planning Committee meet with Ken and set up a group for vulnerable adult issues? Jeff – elder abuse or vulnerable adults committee may be added. We need one more committee.

6. Report on Uniform Adult Guardianship

Dan – The UAG is designed to try to make more uniform guardianship issues from state to state. The home state is the first state entitled to jurisdiction. Home state is the state where the person has lived for 6 months. The Act is supposed to further the goals of having procedures only in one state. Established so that they can be transferred if someone needs to move. About 20 states have passed some version of this. There is no cost for this act, so Bob is hopefully that it will be passed. No section has gotten behind this Act. Just trying to let everyone know that it is floating around, not sure if it is going to be introduced this year or not so he is not asking for the Section to back this bill. Pook – is the homestead the home of the ward? Yes, it is the home of the ward if he has resided there for six months and he will be provided with primary jurisdiction. TO have a rule is better than nothing, because right now, it is whoever does it first. So leads to granny-snatching. People will take grandma at Christmas and file proceedings.

8. Old Business

8.1 DHS Contact Group

Jeff – The section was contacted by DHS to create a contact group where they could air thoughts and ideas on how DHS is working. He would like council members to give him ideas for what kinds of things we should be talking to the department about. It would be a forum where we see that the policy that is implemented is harming individuals on the ground and the state implemented rule has unforeseen consequences.

Pook – like the assessments. How can the department facilitate that kind of conversation? To the extent that you have cases where you can describe these things or issues that you want raised, provide them to Jeff in written format so he can provide them to the contact group if it should come to light.

Julian – I had a meeting with DHS about something that was promulgated improperly but it was clear that they didn't understand how things worked. They took copious notes, but

didn't do anything to change the policy. It is worth doing, but not much hope. We need to create a list of the contacts the governing council members are coming into contact with at the department and then trying to encourage more contact. Send Jeff an email and say "here's who we talked to and this is what we talked to." There is a directory to find every worker at DHS. The rumor that this group is going to take place at DHS.

9. Committee Reports

9.1 Legislative Committee

Julian – Bar association agenda is going to be concentrated in funding for the courts and included in that is funding for public defenders. We don't have any direct proposals that we're taking up to the committee but we are receiving proposals from other committees for us to review. How do we handle things as they come up with little time to circulate? The bar association only lets us take positions when the legislation is in draft form. During session, there are opportunities when we have to get involved and take a position. Civil Law Committee in the house has come to us. In past years, we have always had the executive committee act when we need something to come through. They are empowered to act on behalf of our section when we are between committee meetings. Might be a good idea to expand that group. Can't change the bylaws, but as an informal practice, the chairs of the standing committees and the executive committees can form a group so that when something comes up, there will be a larger group than more than 4 people to make recommendations. Are we comfortable with only having 4 people take a position or should we have a larger group. This happens 3 or 4 times in a session. If you are called upon and don't have time to get approval, you speak for yourself, rather than on behalf of the committee.

Pook – likes the idea of expanding it because then if people are unavailable, then you can get more opinions, it is more of a collective thought.

Laurie – if there is a position that the council is going to take a position on, we should stick to the legislative committee and the executive committee. Really uncomfortable that someone could call and ask us to take a position on a bill in a few hours.

Julian – it does happen with brand new bills that we don't know they are in the bill until it is introduced and then heard the next day.

Cathryn – Look at *Barg* and see if there is new legislation being introduced. Surprised not hearing about this. If this comes up in the next session, the opportunity to have more heads in this situation, she would want to know about that.

Julian – there are times when he won't have time to go through a bill, but with more people, then there will be more eyes to look at it and they might notice something he wouldn't. Asking for more eyes to see what is going on.

Jeff – Julian’s question is when the issue is just a legislative question, can you send it to more people than just the legislative committee? Things can move very fast during a session.

Cathryn – two other questions: do we have something set up for whoever is working as the law clerk to check the sessions to see what is coming up with a bill? It has been a long time since a clerk has worked with Julian to keep track of what is going on. Do we need to have some sort of a budget or proposal to have someone help get the information out or just to monitor it.

Julian – it is going to be a grueling session next session and we’re not going to have much impact on what happens.

Cathryn – if we have funds to make people aware of what is going on, that is part of what we should be doing as a section. Allocate money to get this done. This would be a great benefit for the section and for Julian to manage it.

Julian – the problem is that it is sporadic as to when the bills are introduced. A lot of work for a clerk to do at the beginning but then it dries up. The hard part is hiring a clerk to do that for a year. With Melissa’s position where the clerk is doing research but isn’t necessarily for legislative work, need to define the clerk’s job.

Cathryn- doesn’t westlaw send you an email when bills come up or change.

Julian – the problem is that changes are usually made by changes rather than bills. One thing that is going on is that there is a student at WM who is doing a paper on zombie life estates. Another student is looking at *Barg* and what has been argued in *Barg* that hasn’t been accepted by the court and what has to be changed in the recovery statute. Waiting for the latest development which is that the Commissioner has been trying to figure out how to get in the case as a party, but the AG has now become counsel for the county and has petitioned the US Supreme Court to file a petition for a writ. The new date is October 10 and they are asking for an extension until Nov. 3. These kinds of requests coming from a gov’t agency are usually granted. Will now be *Voss v. Barg*. Julian hasn’t seen the reply that they shouldn’t get an extension because they waited until Sept. 3 to switch counsel. The Commissioner’s counsel becomes counsel for the party.

Jeff – not worth drafting legislation for *Barg* because it is still in legislation. If they are denied cert from the S.Ct., then shouldn’t we be able to enter a proposal saying that 256B.056 should read just like the federal law. The research will be in place to tell us what to do so that we can draft a bill. Legislative clerk should be a paid job. The problem with a student is that finals and the session come at the same time.

Bonita – did we come to a decision on Julian’s proposal with adding people to look at legislation. Executive committee doesn’t mind having the expanded group look at the legislation and make comments. Does the council support this?

Monica - Ask the chairs and see how they feel about taking this job on.

9.2 Law Clerk Committee

Jeff – would seem that we should think about having the law clerk ready to go come Jan. assuming there is work to do. Are we going to double up with the old clerk and the new clerk or are we going to wait until Melissa is done and then have someone new start.

Monica – this has been budgeted for. Expand the student research committee – Jennifer and Kim should be on the committee. Since Melissa has been working, Kim has been the coordinator. Someone supervising the student should be someone at the law school. No one like this at the U or Hamline. Posted job openings at the U or at Hamline. Tried to recruit from other schools. Maybe we have to come up with a mission statement for the committee. John should talk to the council to get ideas for papers and he can forward these topics onto students. Assign them to a research clerk or post them to see if a student is interested. We would have to prioritize and see if we want to pay for it or see if a student would be interested in taking the topic on. Motion to continue the student clerk position after Melissa leaves.

Dan – Melissa has a lot of knowledge to pass the information onto the new clerk. Overlap is a good idea for continuity purposes. Motion passes. Julian moves that we authorize the student clerk committee to overlap with Melissa. Motion passes.

10. New Business

Section law student reception – MN CLE and Bar Association Offices. Tuesday, Oct. 28 between 5:30 and 7:00. Bar Association is looking for people who would be willing to attend the reception. If you would like to attend, you can let Jeff know or let Kim, the liaison, know and you can attend.

Certificate presentation presented to Melissa in recognition to services to section as student research assistant.

Next meeting scheduled for Dec. 12 at 3:30 at this location.

Monica acknowledges Laurie Hanson for receiving the Mary Ellis Goodrl award.

11. Adjourn