

MINNESOTA STATE BAR ASSOCIATION
Elder Law Section Governing Council
Meeting Minutes

Date: August 19, 2011

Council Members Present: Kathleen Eveslage, Richard Hawke, Paulette Joyer, John Kantke, Ken LaBore, Vicki McIntyre, Tom O'Connell (ex-officio), Laura Orr, David Rephan, Sarah Rowley, Suzy Scheller, Dan Steinhagen, Megan Stowers (student member)

Present by phone: Lori Skibbie, Sue Sandahl

Excused Absences: Stuart Bear, Joel Button, Pook Grathwol, Jennifer Lammers, Terrie Lewis, Cathryn Reher, Jennifer Wright, Laura Zdychnec, Julian Zweber

Unexcused/Unknown Absences: Vicki Ahl, Mark Anderson, Marjorie Austin, Sally Mortenson, Kristine Mullman.

Guests: Krista Christopherson, Adam Rohne

MSBA Staff: Tamara Patton

1. **Call to Order:** The Governing Council of the Elder Law Section of the Minnesota State Bar Association met on August 19, 2011, at Estate & Elder Law Services, Monroe Village, 1900 Central Avenue, Minneapolis, Minnesota. The meeting was called to order shortly after 3:30 p.m. by Chair, Suzy Scheller.
2. **Approval of Agenda:** The agenda was approved as submitted with the acknowledgment that those present via telephone had not seen it. Suzy Scheller had sent the agenda to the council at least twice via e-mail; however, many members reported that they had not received one or both of the messages. Tamara Patton will look into the issue. Suzy Scheller will send the materials for this meeting directly to any individual who sends her an e-mail message stating that they did not previously receive them. Materials were sent to those present via telephone before the meeting's adjournment.
3. **Approval of June 17, 2011 Council Meeting Minutes:** Upon motion duly made and seconded, the minutes from the June 17, 2011, 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 May 31, 2011, was discussed and accepted.

Treasurer John Kantke explained the two-month lag that occurs in the reporting of the section's finances as matters are processed through the bank and the MSBA. A lag is also occurring the processing of the section's year-end finances because the MSBA is currently undergoing an audit. He anticipates receiving the section's year-end numbers next week.

Members should contact the Chair of the Strategic Planning Committee, Vicki McIntyre, with any proposed budget adjustments for the 2011-2012 year. John Kantke reminded the council that all requests for payment from section funds must go through him. John has a related reimbursement form. The form is also located in the section council handbook, which was distributed among this meeting's materials. Once John receives the reimbursement forms, he forwards them to the MSBA.

5. Report by MSBA Liaison [Tamara Patton]

5.1. 2011-2012 Work Plan for the Elder Law Section

The MSBA would like each section to approve a section work plan by September 15, 2011. The work plans will be submitted to the MSBA Council after approval by each section's governing council. The work plan will give the MSBA guidance for helping each section meet its objectives.

The template for the work plan assumes that sections sponsor CLE programs. The Elder Law Section is unique in that it has not traditionally presented CLEs aside from the annual Elder Law Institute. The section need not change its regular business in order to fit the template; however, Tamara Patton noted that other sections, particularly the Health and Social Security Disability Law sections, have expressed interest in co-sponsoring CLEs with Elder Law Section. Members expressed openness to considering invitations to co-sponsor CLEs in the future.

The MSBA drafted a tentative work plan for the Elder Law Section that was included among the materials for this meeting. Tamara Patton sought suggestions for additions or modifications. The addition of the Vulnerable Adult Committee to the plan's list of committees was suggested.

The council voiced concern about the deadline for the work plan's approval in light of many members' inability to review the work plan prior to today's meeting. Tamara Patton explained that the council could approve the work plan via e-mail. The council's bylaws permit e-mail voting. Suzy Scheller will call an electronic meeting and subsequent vote next week.

5.2. 2011-2012 Section Council Handbook

The MSBA has compiled updated section handbooks for each section. The most significant change to the handbook is the inclusion of a work plan (see 5.2). The new MSBA President, Brent Routman, is also assembling a council of sections as a forum for section leadership to share ideas about how improve sections generally. The new handbook intends to highlight section *pro bono* initiatives more.

The newsletter timeline listed on page 12 of the handbook does not apply to our section since our section's current process is a "well-oiled machine." The handbook's policies regarding website posting, e-mail distribution, and bylaw amendments do apply. Materials for the website must be submitted to Tamara Patton five (5) business days prior to their anticipated posting. Any materials requiring greater expediency should be

denominated as urgent, but the materials' posting within less than five (5) days cannot be assured.

The draft of the handbook distributed for the meeting did not reflect the current mileage reimbursement rate; the rate was increased to 55.5 cents per mile in July.

Tamara Patton asked that the council review the handbook's roster for accuracy and contact her with any changes. The members present report two changes, the removal of past member and the additional of a current member.

5.3. Planned Leave

Tamara Patton will be maternity leave in December 2011 and January 2012.

6. Proposed MSBA Bylaw Amendments [Suzy Scheller; Julian Zweber via written report]

The proposed bylaw amendments permit to the MSBA to respond to mid-session changes in legislative priorities. The amendments transfer authority to develop legislative priorities from the MSBA assembly to the MSBA council under certain conditions; however, the amendments do not change the approval process for legislative priorities. The Chair of the Legislative Committee, Julian Zweber, and the Section's MSBA Assembly Representative, Lori Skibbie, favored supporting the amendments (*see attached report*). Suzy Scheller observed that a vote on the matter was not required, but she and Lori Skibbie viewed a vote as helpful to Lori in her role as the section's representative. Those present unanimously approved supporting the amendments.

7. MSBA Assembly Meeting [Lori Skibbie]

At the June 24th Assembly meeting, those present broke into small groups to discuss the strengths and weaknesses of the current structure of the MSBA and possible alternatives. The MSBA governance structure currently includes a 128-member Assembly, which is the corporate board of directors, and a 15-member Council that has limited powers. In the small groups, we reviewed the governance structures of other bar associations and made suggestions for the MSBA structure. The suggestions of the small groups will be compiled for review. In addition to these discussions, the new president was introduced, and awards were given. A discussion of efforts to encourage regular attendance by Assembly members also occurred.

8. Committee Reports

Suzy Scheller would like to receive committee reports by noon (12 P.M.) on the Thursday preceding a Governing Council meeting. She reiterated the council's policy regarding attendance (three unexcused absences per year; council members should contact the chair in advance when they are unable to attend a meeting).

8.1. Communications [Laurie Hanson] (*see attached report*)

The council expressed a hearty "thank you" for the contributions of Marjorie Austin, the outgoing editor of the section newsletter. It also warmly welcomed news that Allison Burke (allison@twincities-elderlaw.com) will serve as the newsletters new editor. Please view the committee report for further details. A sign-up sheet circulated the

meeting in response to the committee's request for attorneys who will each be responsible for writing or soliciting articles for the newsletter for one month.

8.2. Elder Law Institute Planning [Suzy Scheller]

8.2.1. Minnesota CLE Brochure

The brochure has been printed and distributed. Members of the committee (Julian Zweber, Andrea Palumbo, Cathryn Reher, and Suzy Scheller) attended a meeting with the keynote speaker, Department of Human Services (DHS) Commissioner Cindy Jesson, in anticipation of her address. Commissioner Jesson is open to hearing from section on issue and asked to receive the section newsletter.

8.2.2. Exhibitor Brochure

Minnesota CLE has adopted a new policy for exhibitor brochures. The brochures seek exhibitors and sponsors for events. The brochure may be viewed on Minnesota CLE's website.

8.3. Legislative [Julian Zweber] (*see attached report*)

8.4. Medicaid State Plan [Stuart Duering and Tom O'Connell]

8.4.1. Updated State Plan

The committee requested amendments to the state plan, but instead receiving the amended section, they received the entire updated state plan. Cathryn Reher is working with staff at DHS to see if they can "bookmark" updated sections for tracking purposes. Suzy Scheller suggested that the committee may want to speak with DHS Commissioner Cindy Jesson regarding concerns with the SPA process.

8.4.2. Rule-Making Process for State Plan Amendments (SPAs)

Members of the council briefly discussed the possibility of a legislative effort related to transparency and opportunities to comment in the SPA process. A brief on the issue would be helpful; however, no one present volunteered to brief the issue.

8.5. Strategic Planning Committee [Vicki McIntyre]

The committee is awaiting the section's year-end financial report. Once it has received the report and any suggested modifications to the 2011-2012, it will recommend a revised budget for approval. (The section submits its budget two years in advance to avoid going a few months without a budget and then revises the budget at the beginning of the year if other financial priorities have been recognized.) The committee will then present at 2012-2013 budget for approval.

The Strategic Planning Committee also plans to reexamine its reserve policy, which results in 150% of the budget being held in reserves. The committee will contemplate a different reserve policy and will be asking, "What do we want to do with our reserves?" The committee will discuss ideas at its next meeting and welcomes submissions by members of the section.

9. Old Business: Requests for Elder Law Section Contribution

The council received a request for contributions from the Volunteer Lawyers Network. Members discussed whether the council's policy on requests for contributions should be clarified. Currently, the council considers giving contributions only if the cause has a direct benefit to the section membership. For example, the council voted against a section contribution supporting relief in Haiti but encouraged individual members to give.

Suzy Scheller indicated that the creation of a policy for section endorsement of organizations would also be appropriate. She indicated that at least one member expressed concern about the endorsement of an organization in the past. The section must vote on any endorsement and the MSBA must then approve it.

The council members discussed whether parameters should be set for when supporting a cause should be taken to the section membership and what factors should be considered when the council votes upon supporting a cause. A council member asked whether the section had an unspoken policy that not to endorse causes to avoid circumstances of elevating one member's cause or causes over the others'. Other members of the council indicated that the section had endorsed an organization in the recent past.

The Strategic Planning Committee will contemplate policies for supporting causes as an element of its upcoming discussion regarding the handling of the section's reserves.

10. New Business:

10.1. Awards

Julian Zweber, Co-Chair of the Awards Committee, expects to begin soliciting nominations for the Mary Alice Gooderl Award soon.

10.2. Recent Development in Representation of Clients on SSI

Kathleen Eveslage inquired whether other members of the council had encountered clients facing administrative sanctions related to SSI benefits. One of her clients received a letter stating that the client's benefits will be discontinued for six (6) months because she "willfully and knowingly" gave incorrect information. The client was otherwise eligible for benefits.

The letter detailed the penalties for subsequent sanctions: first (1st) sanction, six (6) months of benefits; second (2nd) sanction, one year of benefits; and third (3rd) sanction, two (2) years of benefits. The sanctions present great hardship. Kathleen Eveslage has researched administrative sanction and has not located any related information. No one else in the council had encountered this issue.

The council briefly discussed the possible rationale behind the described administrative sanction (*e.g.*, fraud prevention, an alternative to possible criminal penalties) and

suggested other members of the bar to contact regarding the issue. Appeal rights do accompany the administrative sanction.

10.3. Co-Sponsoring a CLE

The Education Committee is looking into co-sponsoring a CLE. Suzy Scheller sought the opinion of the council in pursuing co-sponsorship with the health law section. The sections have common interests in certain areas and encounter each other in others (*e.g.*, nursing home discharge, financial exploitation). Co-sponsoring a CLE was again mentioned as an option for using section reserves.

10.4. Mentoring New Attorneys

David Rephan proposed a mentoring initiative to pair young attorneys with more experienced attorneys. He noted that only 15% of the section's membership are under 40 years old. The council briefly considered whether this percentage was reflective of the percentage of younger attorneys in practice as well as the percentage of younger attorneys as sections members.

Adam Rohne, a guest who took the state bar exam in July, voiced his support of the idea. Vicki McIntyre alluded to an effort involving law student members two years ago. John Kantke and Laura Orr, Co-Chairs of the Law Student Committee, reported that the effort did not result in any actual pairings; however, a comparable effort with new attorneys or a different structure may produce different results.

A few council members referred to young attorneys who attend once and then do not return. David Rephan suggested that this pattern may result from new attorneys feeling inadequately prepared to follow the meeting's content. Kathleen Eveslage reiterated this concern by commenting that an elder law attorney must be a highly specialized generalist.

MSBA liaison Tamara Patton suggested co-sponsoring a Practice 101 program with the New Lawyers Section. A Practice 101 is a session like a CLE that precedes a meeting of the New Lawyers Section. MSBA membership includes approximately 3,200 new lawyers. Tamara Patton suggested that a Practice 101 might diminish any "stigma" associated with elder law.

Upon inquiry, Tamara Patton also indicated that she could provide the council with a list of the section's newer attorneys. She suggested that other sections have used their reserves to provide scholarships or stipends to students who perform legal work in elder law.

Those present then discussed whether the low percentage of younger attorneys was a factor of the employment market. Younger attorney may not observe other attorneys getting hired in elder. Firms practicing in elder law are generally smaller and diminished the prospect of seeking a job with a particular firm.

Tom O'Connell described the Elder Law Section's potential to serve as one big support group. Paulette Joyer acknowledged the learning curve presented by a practice area that produces new acronyms every week.

Suzy Scheller suggested that the idea be presented to the Law Student Committee: How would they like to be supported as young attorneys? Suzy Scheller added that the idea could be presented during the committee's break-out session at the Elder Law Institute.

John Kantke recommended that an effort to help new attorneys establish practices in elder law would benefit from a partnership with the Solo and Small Firm Section. As a young attorney, he needed to answer two questions: How do I run a business? How do I practice in elder law?

Those present clarified their objective of any new initiative as developing young attorneys, not necessarily law students. The group suggested that reserves could be spent on developing a guide for new attorneys, a mentorship program, further resources like those on practicelaw.org, or co-sponsored CLEs. David Rephan will contact Tamara Patton for information about the section's current younger attorneys.

Adjourned at approximately 5 P.M.

The next meeting of the Governing Council will be held on October 7, 2011 at the Minnesota CLE Conference Center in Minneapolis.

2011-12 MEETING SCHEDULE

Friday, October 7, 2011 – 3:45 P.M – following Elder Law Institute at the MN CLE Conference Center
Friday, December 16, 2011 - 3:30 pm - EELS
Friday, February 17, 2012 - 3:30 pm - EELS
Friday, April 20, 2012 - 3:30 pm - EELS
Friday, June 15, 2012 - EELS

Call-In Instructions: Call: 1-800-406-9170

Enter Participant Code: 2637797

ADDENDUM

On August 24, 2011, President Suzy Scheller reported to the Elder Law Council via email that the updated work plan was approved via electronic motions and vote in the following manner: motion by Dan Steinhagen, second by Laura Zdynchec, 15 members being present electronically, 15 votes in favor of approval of the work plan, and no nays.