

**THE FLORIDA BAR ELDER LAW SECTION**  
**Executive Council Meeting Minutes**  
**Elder Law Section Annual Retreat**  
**The Meritage Resort & Spa, Napa, CA**  
**Friday, October 4, 2019**

**I. Call to Order – Randy C. Bryan, Chair**

Randy Bryan called the meeting to order at 12:05 p.m. PDT and welcomed everyone in attendance. He thanked those who had joined the Section on its annual retreat and confirmed executive council members attending the meeting by phone.

**II. Approval of June 28, 2019 Minutes – William Johnson, Secretary**

Chair Randy Bryan asked for a motion to approve the June 28, 2019, minutes on William Johnson's behalf. A motion was given, seconded, and **PASSED** unanimously.

**III. Chair's Report – Randy C. Bryan**

Randy extended special thanks to Travis Finchum and Ashley Gonnelli of Guardian Trust, who sponsored the retreat's Friday evening group cooking class. He reported that Elder Law Section business is going well and that the biggest topics of discussion are the multiple legislative issues in which the Section is engaged. He also reported that one of the most important strides the Section has made recently is becoming a more recognized legislative participant. He thanked past chairs Collett Small and Jason Waddell for their leadership in recent years which helped guide the Section to this point.

**IV. Immediate Past Chair's Report – Jason A. Waddell**

Jason was present by phone but had nothing to report.

**V. Chair-Elect's Report – Steven E. Hitchcock**

Steve reported that agenda planning for the 2020 Elder Law Essentials and Annual Update programs has neared completion. He also reported that he, Howie Krooks, and Leslie Reithmiller had prepared the proposed 2020-2021 Section Budget which would be submitted for Executive Council vote during this meeting.

**VI. Treasurer's Report – Howard S. Krooks**

Howie referred members to the June 2019 Section financial statements included in the agenda materials and offered a summary of the year end standings. The Section closed the 18-19 fiscal year with an ending fund balance of \$356,791, a \$59,360 increase from the beginning fund balance of \$297,431. He reported that although the Section had budgeted a section profit split of \$27,000, total CLE revenue fell short at \$17,695. He explained that this was due to a current financial loss on the Annual Convention CLE courses, as well as the Special Needs Trust full-day CLE in Tampa. He clarified that the June earnings on these and other joint sponsored CLE courses were not "final" since the courses' aftermarket products are available for sale for the next 18 months.

Howie then referred members to the proposed 2020-2021 Section and Annual Retreat budgets, and invited questions and discussion on any particular items. He and Steve Hitchcock pointed members specifically to the proposed 5101-Consultants line item budget of \$25,000 to be used for a strategic

planning consultant and prospective public relations/marketing consultant (pending the outcome of the bidding process currently underway in cooperation with the Task Force). Steve clarified that although he is proposing to allocate funds for this expense, this in no way obligates the Section to contract with a PR consultant or, if it does contract with a consultant, to spend that amount.

Discussion followed about whether an allocated \$20,000 would be enough for a PR consultant. Victoria Heuler emphasized the importance of this kind of investment, considering the service and publicity this initiative could provide not only for the Section, but for Elder Law practitioners across Florida. She recommended the allocation for the PR consultant be increased to \$25,000, with \$5,000 allocated to a strategic planning consultant, for a total amended line item budget of \$30,000. A motion was made to approve the proposed budget as presented, with an amended 5101-Consultants line item amount of \$30,000. The motion was seconded and **PASSED** unanimously.

## **VII. Substantive Committee Report – Victoria Heuler, Substantive Vice Chair**

Victoria thanked all substantive committee chairs for their engagement and called for their reports.

### **A. Abuse, Neglect, and Exploitation Committee – David Weintraub and Ellen Cheek**

Ellen Cheek reported that the Committee held its first 19-20 meeting in September and planned to meet every 4<sup>th</sup> Tuesday of the month by phone. The Committee has a list of 34 current members, roughly half of whom participated on the first committee call. She was pleased to report that the membership is a more diverse group of practitioners than ever before. The Committee is currently working with Steve Hitchcock on a panel session for the 2020 Annual Update program which will involve prosecutors and regulators involved in the enforcement of ANE cases.

### **B. Estate Planning and Probate Committee – Horacio Sosa and Amy Collins**

Amy Collins reported that the Committee meets on the 2<sup>nd</sup> and 4<sup>th</sup> Thursdays of each month, on an as-needed basis, and that it is currently seeking volunteers to assist with a project to collect information on local rules and regulations. Victoria reminded everyone that the Elder Law Section website is a valuable and dynamic resource to section members and to the public, and that once the Committee has collected this information, to consider making it available via its committee web page.

### **C. Ethics Committee – Steven Hitchcock**

Steve referred members to the documents provided in the agenda materials and followed up on an item initially introduced at the January Executive Council Meeting – the proposed amendment of FL Rule 4-1.14 Client Under a Disability to more closely resemble the ABA Model Rule 1.14 Client with Diminished Capacity. He summarized the RPPTL Section's efforts to propose this rule change and the Elder Law Section's involvement in the process of drafting revisions. In May, RPPTL submitted the proposed rule change and the ELS Ethics Committee recommended formal endorsement by the Elder Law Section. He called for a motion to accept the proposed rule change as presented by the RPPTL Section, and to work in cooperation with RPPTL in the coming months during the rule change process with The Florida Bar. The motion was given, seconded, and **PASSED** unanimously.

**D. Guardianship Committee – Stephanie Villavicencio and Twyla Sketchley**

Stephanie Villavicencio reported that the committee meets on the 2<sup>nd</sup> Tuesday of each month, and that all of its current administrative tasks are complete. Stephanie has been attending the meetings regarding the Chapter 744/745 rewrite. There was a last-minute inclusion of the DNR court approval requirement.

**E. Legislative Committee – Shannon Miller, William Johnson, and Travis Finchum**

Travis Finchum reported that the Committee meets by phone every other Friday, and that the committee chairs' participation is critical, as instant feedback and input is often needed during the legislative session. There are three initiatives in which the Section is actively engaged. The committee has encountered pushback from the RPPTL Section on all three, but has an ongoing, constructive dialogue with them in an effort to reach a "unified" front for the legislature.

At the beginning of the fiscal year, the Section's main legislative initiatives had been the UAGPPJA, the Injunction Glitch Bill (Amendment to 825.1035), and the Exploiter Disinheritance Bill (Changes to 732.803, 733.303, and 736.1104). The Section received positive feedback on some of these measures but decided to table them in light of this session's legislative climate and circumstances. Instead, the Committee is focusing its attention on responding to other bills that have been filed. The Section is currently working with RPPTL, FSGA, and the Clerk's Office on the Orlando guardianship issue. They have given a preliminary draft to Senator Passidomo and it has gone to bill drafting. The Section is also monitoring the proposed Bankers Bill, which is back for a third time, and would permit banks to release funds from an account holding less than \$10,000 to virtually anyone who alleges that there is no will and that they are next of kin. The ELS and RPPTL both oppose this bill. The committee is also monitoring the Vulnerable Investors Bill.

**F. Medicaid/Government Benefits Committee – John S. Clardy, III and Heidi Brown**

John Clardy referred members to the Committee's written report but mentioned that they are still monitoring retroactive Medicaid.

**G. Special Needs Trust – Howard S. Krooks and Amy Fanzlaw**

The Committee referred members to its written report, but Howie added that the Social Security Administration just mysteriously removed the new POMs and it is currently unclear whether this is permanent or if they will be republished in another form. The Committee will be publishing an article in the *Advocate* on this topic.

**H. Veterans Benefits – Teresa Bowman and Jack Rosenkranz**

Teresa Bowman reported that although the Committee has stumbled a bit this year, Jack has proposed some amazing ideas to try and recruit/engage new committee members. The Special Needs Trust Committee recommended that the Veterans Committee consider reaching out to ELS membership via eblast, as they experienced success with that this year.

## **VIII. Administrative Committee Reports – Carolyn Landon, Administrative Vice Chair**

### **A. Budget Committee – Howard S. Krooks**

Howie had no further report to give after presenting the 2020-2021 Proposed Section budget during his Treasurer's report.

### **B. CLE Committee – Danielle Faller and Marjorie Wolasky**

Danielle Faller reported that the Committee was working with Steve Hitchcock in preparation for the 2020 Elder Law Essentials and Annual Update programs, scheduled January 16 – 18, 2020, at the Loews Portofino Bay Hotel in Orlando.

### **C. Membership Committee – Donna McMillan and Mike Jorgensen**

Donna McMillan referred members to the Committee's written report and offered to partner with the Veterans Benefits Committee to recruit and engage new members.

### **D. Mentoring Committee – Dayami Sans and Jodi Murphy**

Dayami Sans referred members to the Committee's written report.

### **E. The Advocate Committee – Heather Samuels and Genny Bernstein**

The committee chairs referred members to their written report.

## **IX. Special Committee Reports**

### **A. Certification Committee – Amy Fanzlaw and Laurie Ohall**

Amy Fanzlaw reported that the Committee has a full roster of nine members and that they are actively working to draft this year's Elder Law Board Certification exam. There are currently 16 applicants for this year's exam.

### **B. Law School Liaison Committee – Enrique Zamora and Max Solomon**

Stephanie Villavicencio delivered the report on behalf of the committee chairs, who were not present. The Committee has decided to split the law school liaison duties between North Florida (Max Solomon) and South Florida (Enrique Zamora). They are also currently in the process of drafting guidelines for the proposed section sponsored law student essay contest. The Committee will be preparing promotional materials in advance of the 2020 Annual Update program and is also preparing for the 2020 Law School Symposium scheduled in February. The Committee would like for the Section to consider another sponsorship for this event in 2020. Jason Waddell referred the Committee to the recently developed Section Sponsorship Request Form which will be available on the Elder Law Section website.

**C. Sponsorship Committee – Jill Ginsberg and Jason Waddell**

Jill Ginsberg reported that 9 of the 14 available Annual Update sponsorships have been filled, including a new breakfast sponsorship. She anticipates another full slate of program sponsors for 2020 and invited Executive Council members to contact her with any other prospective sponsors.

**D. UPL Committee – John Frazier and Leonard Mondschein**

John Frazier discussed two topics: 1) A civil lawsuit in Texas against Medicaid Done Right (MDR), filed by a Texas law firm, on behalf of the law firm, was settled out of court, with a (presumably) confidential agreement. 2) The ELS UPL Committee has been contacted by Florida attorneys recently, (and also numerous times in past years) regarding Platinum Benefit Planning, and the company's owner (Antony Turbeville). Mr Turbeville is a non- attorney Medicaid planner who describes himself as an "expert" in the field Medicaid planning. Mr. Turbeville has been barred from the securities industry, for the fraudulent sale of securities to the elderly.

Most recently, Mr. Turbeville has been soliciting Florida attorneys by e-mail (presumably these attorneys are members of the ELS and/or AFELA). I myself was solicited by e-mail by Platinum last week. The e-mail urges attorneys to: "Stop sending your Medicaid cases to other attorneys! Keep your clients in house!" I will send you the e-mail I received from Platinum, as well as public information from FINRA, regarding Mr. Turbeville's bar from the securities industry.

**E. Technology Committee – Alison Hickman and Lawrence Levy**

Alison Hickman reported that the Committee recently dealt with a website breach which required attention from the Section's web administrator. She thanked Victoria Heuler for bringing the website issue to the Committee's attention immediately and thanked Leslie Reithmiller for her responsiveness on the issue despite the fact that she was out of the office on vacation at the time. Elyk Innovation was able to resolve the issue and the website is fully functional and has been updated regularly by Leslie.

Social media outreach is going well, as the Section's Facebook page continues to receive increasing numbers of views and "likes." She reported that the Committee's goal is to increase Facebook and Twitter posts and engagement. She also reported that the Committee desires to implement their committee outreach plan, where committee chairs will help provide content for social media posts, and in turn, whose efforts and activities can be highlighted to social media followers.

**F. Strategic Planning Committee – Jill Ginsberg, David Hook, and Collett Small**

Jill Ginsberg reported that the Committee is still making a decision on what kind of consultant to use in 2020, as they would like to try a different direction than the vendor used for 2019.

**G. Litigation Committee – Ellen Morris**

Ellen Morris was not present, so Randy referred members to her written report.

**H. Disability Law Committee – Steven Hitchcock**

Steve reported that Tamara Schweinsberg had recently left elder law practice and is no longer co-chairing the Committee. He is currently seeking a volunteer to co-chair. Because of other section commitments and duties, the Disability Law Committee has not been very active, but he is currently monitoring the mandatory ADP revision.

**X. Board of Governors Report – James G. Vickaryous**

BOG Liaison James Vickaryous was not present.

**XI. Liaison Reports**

**A. AFELA – Twyla Sketchley**

Twyla was not present and gave no report.

**B. FSGA – William Johnson**

Bill reported that FSGA recently hosted a wonderful roundtable event in Brevard County on DNR Best Practices. The event drew over 100 attendees and panelists included the circuit's Chief Judge, FSGA's Executive Director, and others.

**C. RPPTL – Marjorie Wolasky and Travis Finchum**

Travis reported that the next RPPTL executive council meeting is scheduled for November 6 – 9, 2019, and that the Section is hosting a Probate CLE on November 15.

**D. NAELA – Howard S. Krooks**

No report.

**E. Task Force – Ellen Morris**

Ellen was not present, but Randy Bryan briefed the council on a Task Force subcommittee's efforts to work on a formalization of procedures and policies and its organizational structure. There are 8 Elder Law Section members on the subcommittee, including Randy.

**XII. New Business**

No new business.

### **XIII. Adjournment**

There being no further business, Randy Bryan adjourned the meeting at 1:40 p.m. PDT. The next meeting of the Elder Law Section Executive Council will be at 6:00 p.m. EDT on January 16, 2020, at the Loews Portofino Bay Hotel in Orlando.

#### **Attendees:**

Randy Bryan  
Jason Waddell\*  
Steven Hitchcock\*  
Carolyn Landon\*  
Victoria Heuler  
Howard Krooks  
William Johnson\*  
Stephanie Villavicencio  
Emma Hemness  
Teresa Bowman  
Max Solomon\*  
Dayami Sans\*  
Genny Bernstein\*  
Shannon Miller  
Todd Zellen  
Travis Finchum  
Brian Jogerst  
Danielle Faller\*  
Jill Ginsberg\*  
Alison Hickman\*  
Donna McMillan\*  
Amy Fanzlaw\*  
Amy Collins\*  
Ellen Cheek\*  
John Frazier\*  
Heather Samuels\*  
John Clardy, III\*  
Lawrence Levy\*  
Ashley Gonnelli  
Leslie Reithmiller

\*Attended by phone.