

MSBA ELDER LAW SECTION eNEWSLETTER

December 18, 2007

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EDITOR'S NOTE: The eNewsletter will be on Holiday Hiatus during the last two weeks of December. Please look for the next issue on Tuesday, January 8, 2008. Best wishes to all Section members for a wonderful holiday season.

IN THIS ISSUE:

- **BARG ALERT:** Julian Zweber reports that "a funny thing happened on the way to a decision" in the Barg case, under "Minnesota Cases," below.
- **ELDER LAW SECTION GOVERNING COUNCIL REPORT,** under "Section Activities." Please note new volunteer opportunities.
- **MSBA ASSEMBLY MEETING REPORT,** under "Section Activities."

ELDER LAW NEWS

Advice on coping with death: Health care directives

http://www.morrissuntribune.com/articles/index.cfm?id=12275&ion=News&freebie_check&CFID=75335464&CFTOKEN=97451636&jsessionid=883070dfd050297f44b4

Wills for Heroes' program provides free basic estate planning to local emergency responders

http://www.wctrib.com/articles/index.cfm?id=28043&ion=homepage&freebie_check&CFID=75335636&CFTOKEN=87846622&jsessionid=8830e054698a2142b413

Former TV personality promotes jobs for seniors

<http://www.argusleader.com/apps/pbcs.dll/article?AID=/20071217/BUSINESS/712170311/1003>

Minnesotan is oldest-ever Nobel prize winner

<http://thestar.com.my/news/story.asp?file=/2007/12/11/apworld/20071211080117&sec=apworld>

ELDER LAW SECTION ACTIVITIES

MSBA ASSEMBLY REPORT

The MSBA Assembly held its quarterly meeting on Friday, December 14, 2007. The Assembly voted to endorse several proposals which have been supported by the Elder Law Section through a vote of the Section's Governing Council, including the following

proposals from the Probate and Trust Section, the Real Property Section, and the Animal Law Section:

- To make technical corrections conforming the Uniform Anatomical Gift Act to the new Darlene Luther Uniform Anatomical Gift Act;
- To amend the Probate Code regarding a) changing the share of a surviving spouse of a decedent who made a pre-marital will from elective to intestate; b) extending the homestead exemption to situations where the homestead passes in trust for the children or spouse of the decedent; and c) clarifying amendment to creditors section of the Probate Code, simplifying language regarding notice to and treatment of claims by known creditors;
- To amend Minn. Stat. Chapter 507 and related statutes to create a transfer on death deed;
- To create a pet trust statute.

Sections sponsoring legislative initiatives endorsed by the MSBA Assembly will receive lobbying support from the MSBA legislative representative during the 2008 legislative session.

ELDER LAW SECTION GOVERNING COUNCIL REPORT.

The Elder Law Section met on Friday, December 14, 2007, and voted to approve the following resolutions:

- To serve as state liaison for the National Advance Directive Coalition's "NATIONAL ADVANCE DIRECTIVES DAY," to be held on April 16, 2008. The Section's liaison efforts will be headed up by the new Pro Bono Committee, as its first pro bono effort. Section members wishing to become members of the Pro Bono Committee or to participate in the inaugural National Advance Directives Day initiative may contact Pro Bono Committee chair, Jennifer Wright, at jlwright1@stthomas.edu.
- To support the Probate and Trust Section's proposals to oppose a Minnesota Gift Tax and to oppose unrestricted independent valuation of assets subject to Minnesota estate tax. (Note: Both of these proposals were deferred from the MSBA Assembly agenda at its December 14, 2007, meeting to allow time for review by the Tax Section.) The Governing Council also voted to support other Probate and Trust Section positions, as recommended by the Elder Law Section's Legislative Committee, including opposition to the Uniform Principal and Income Act and opposition to adoption of the Uniform Power of Attorney Act.
- To support the establishment of a task force to review disparity between legal rights and protections available to same-sex couples as compared to different-sex couples, as proposed by the MSBA's Diversity Committee. The proposed task force would study the issue and report to the MSBA Assembly by June, 2009. The proposal has also been endorsed by the MSBA's Family Law Section.

The Governing Council also reviewed all Section committees. Section Committees and the chairs of the committees are:

- Awards - Julian Zweber
- By-Laws - Richard Hawke
- Elder Law Institute Planning - Jeff Schmidt (2008)
- Greater Minnesota Support - Tom Wilson
- Law Clerk - John Kantke
- Legislative - Lori Guzman and Julian Zweber
- Medical Assistance - Cathryn Reher and Jeff Schmidt
- Members Education - Laura Zdychnec
- Newsletter - Jonathan Dyrud
- Nominating- Lori Guzman
- Pro Bono - Jennifer Wright
- Strategic Planning - Monica Lewis
- Web Site - Kim Dayton

Section members who would like to volunteer to participate on any of the Section committees may contact Laurie Hanson at lhanson@mnelderlaw.com.

MEDICAL ASSISTANCE COMMITTEE MEETING: The next Medical Assistance committee meeting will be today, Tuesday, December 18, 2007, at the MAO offices. Members may attend by phone. For directions, or to attend by phone, please contact Tracie Fenske with Long, Reher & Hanson, P.A. at 952-929-0622.

MINNESOTA CASES

Supplemental Briefs Ordered in Barg Case

By Order dated December 11, 2007, the Minnesota Supreme Court has ordered the parties in the Barg case (In re Estate of Francis E. Barg, Docket No. A05-2346), to file supplemental briefs. The Barg case involves a direct challenge to the authority of the state to recover medical assistance benefits from the estate of a community spouse who never received medical assistance benefits himself.

The Court has directed the parties to address three issues in the supplemental briefs:

1) The relationship, if any, between the 2003 and 2005 amendments to Minn. Stat. 256B.15, particularly subdivisions 1 and 1c-1K regarding real property a predeceased spouse owned as a life tenant or a joint tenant with right of survivorship, and the authority appellant Mille Lacs County argues exists under section 256B.15, subdivisions 1a and 2, to recover MA payments made to a predeceased spouse against the estate of a non recipient surviving spouse, and how, if at all, does that relationship affect the preemption analysis regarding appellant's authority under section 256B.15, subdivisions 1a and 2;

2) Whether the limitation of the scope of subdivisions 1c-1k to life estate and joint tenancies affects the scope of the recovery authority granted in subdivisions 1a and 2, in general, and specifically as applied to the facts of this case; and

3) Whether the limitation of the scope of subdivisions 1c-1k to life estate and joint tenancies established on or after August 1, 2003, affects the scope of the recovery granted in subdivisions 1a and 2, in general, and specifically as applied to the facts of this case.

Initial briefs are due by January 4, 2008. Responsive briefs, if any, must be filed by January 15, 2008.

Observers were hoping for a decision in the Barg case by early February, if not sooner. The request for supplemental briefs indicates a later date for the expected decision and raises the expectation that the case will be decided by only five justices of the Court. Justice Paul H. Anderson recused himself from the case prior to oral argument and Justice Sam Hanson, who actively participated in the oral argument, retires on January 1, 2007.

Submitted by Julian J. Zweber

STATUTES, REGULATIONS, BULLETINS

DHS BULLETIN # 07-11-08: CHANGES TO MFIP AND DWP EFFECTIVE JANUARY 1, 2008, AND FEBRUARY 1, 2008. The 2007 legislature passed several changes to statute that will become effective in January or February of 2008, relating to the Minnesota Family Investment Program (MFIP) and the Diversionary Work Program (DWP). This bulletin describes the changes in asset policy for DWP and MFIP and the change in eligibility criteria for refugees applying for cash assistance, as well as changes excluding all SSI benefits when determining eligibility for DWP and MFIP. The bulletin can be accessed at:

http://www.dhs.state.mn.us/main/groups/publications/documents/pub/dhs16_139930.pdf

DHS BULLETIN # 07-24-01: MINNESOTA SENIOR CARE PLUS EXPANSION UPDATE. This bulletin provides an update on the Minnesota Senior Care Plus program expansion, replacing Bulletin # 05-24-01. The bulletin can be accessed at:

http://www.dhs.state.mn.us/main/groups/publications/documents/pub/dhs16_139927.pdf

DHS BULLETIN # 07-25-07: UPDATE ON ELDERLY WAIVER PROGRAM INTEGRITY INITIATIVE: CRITERIA FOR AUTHORIZATION OF 24 HOUR CUSTOMIZED LIVING. This bulletin outlines "other" criteria for authorization of 24-hour customized living services as allowed in the 2007 legislative changes to Minnesota Statutes Section 256B.0915, governing the Elderly Waiver Program. The bulletin also contains information about edits in MMIS that will become effective January 1, 2008, and provides policy clarification about related issues. The bulletin can be accessed at:

http://www.dhs.state.mn.us/main/groups/publications/documents/pub/dhs16_139928.pdf

DON'T FORGET THAT THE ELDER LAW WEBSITE IS A GREAT RESOURCE. Here's what you can find on the Website: Links under "What's New" to the DHS Health Care Programs Manual, the updated Income and Asset Eligibility Figures for Minnesota Health Care Programs, the DHS Bulletin on treatment of uncompensated transfers, the Minnesota Bankers Association Compliance Bulletin on Powers of Attorney, and a legislative summary; Practice Links to organizations such as NAELA, ABA Commission on Law and Aging, Minnesota Senior Federation; Links to Federal and State Government Agencies, Statutes, and Regulations; Meeting Notices, Listings of Officers and Council Members, Section Bylaws, and more.

To access the ELDER LAW SECTION WEBSITE

Click here: <http://www2.mnbar.org/sections/elder-law/index.asp>

Please send eNewsletter contributions by noon on Saturday of each week to Vicki McIntyre at vmcintyre2@yahoo.com