

MSBA ELDER LAW SECTION eNEWSLETTER

February 12, 2008

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VOLUNTEER OPPORTUNITIES ANNOUNCED FOR NATIONAL HEALTHCARE DECISIONS DAY

Volunteers are being sought for the first annual National Healthcare Decisions Day, to be held on April 16, 2008. In conjunction with NHDD, groups will sponsor programs at a number of sites across the state. Programs will include a presentation by at least two professionals from different disciplines, explaining the importance of Health Care Directives and answering questions from participants. At some venues, on-site assistance in completing Health Care Directives will be immediately available, while other sites will offer a referral service for assistance in completing a Health Care Directive at a later time.

Volunteers are needed for the following:

- 1. Sponsorships** - Individuals or groups who wish to sponsor an event for NHDD will be provided with a support packet from the Pro Bono Committee and assistance in identifying the professionals who will present the program for the event. Sponsors will be responsible for all event costs, which might include venue, refreshments, and materials. Anyone interested in sponsoring an NHDD event may contact committee chair Jennifer Wright at jlwright1@stthomas.edu.
- 2. Presentations** - Presenting attorneys will be partnered with another professional from one of several disciplines - including social workers, nurses, doctors, chaplains, and gerontologists - to explain what a Health Care Directive is, why it is important, and how it may be completed. Presenters will be provided with a working script from which the presentations may be prepared. Presenters will also be available to answer general questions from event attendees.
- 3. On-site Assistance with Completion of Health Care Directives** - Attorneys who volunteer for on-site assistance will serve as a back-up resource for students who have been trained in completion of advanced directives. The attorneys will assist the students and answer questions, and may be available to notarize completed Health Care Directives. On-site attorneys will sign up for one- or two-hour time slots on the day of Wednesday, April 16, 2008.

4. Post-NHDD Assistance with Completion of Health Care Directives - Attorneys who volunteer for post-NHDD assistance will be available for referral of event attendees who wish to complete a Health Care Directive following the NHDD event. Referral attorneys may schedule appointments with event attendees at a time and place of their choosing, for one-on-one assistance. All attorneys, both on-site and post-NHDD, will provide assistance on a pro bono basis.

TO VOLUNTEER: If you are interested in being a presenter, or in providing either on-site or post-NHDD assistance in completing Health Care Directives, please contact Pro Bono Committee Chair Jennifer Wright at jlwright2@stthomas.edu.

CENTER FOR ELDER JUSTICE AND POLICY REPORTS PUBLIC POLICY AND INFORMATION PROJECTS

William Mitchell law students enrolled in the Elder Justice and Policy Keystone course this semester are working with state and national elder advocacy organizations on a wide variety of public policy and consumer information projects. Letty Van Ert, a 3-L student, is working for the Minnesota-North Dakota Chapter of the Alzheimer's Association on two projects. The first project is writing consumer tip sheets in plain language so that consumers can easily understand the laws and other resources relating to dementia. The second project involves two family caregiver support bills that will be introduced in 2008 in the Minnesota legislature. The first bill would expand current Minnesota statutes from allowing parents to use paid time off for the care of a sick or disabled child, to allowing workers to use paid time off to care for a sick or disabled elderly relative. The second bill would create a tax credit for people who care for a sick or disabled elderly relative. Letty will be conducting research for purposes of advancing these bills, as well as attending legislative hearings. For more information, contact Prof. Kim Dayton at kim.dayton@wmitchell.edu.

SAVE THE DATE

Elder Mediation Training will be offered on June 13-14, 2008, at William Mitchell College of Law. This two-day training session will feature Bob Rhudy. Watch this eNewsletter for further information.

ELDER LAW NEWS

The need for geriatric nurses is growing
<http://www.madison.com/tct/news/270691>

Home safety is a priority for seniors. The director of the Center for Gerontological Nursing at the University of Minnesota advocates for public campaigns about fall-safety awareness.
<http://www.bradenton.com/health/story/371780.html>

Senior citizens lobby for an economic aid plan. Coleman reports that Minnesotans clamor for the heating aid.

<http://ap.google.com/article/ALeqM5hCBVWrZWZ3Hut4vdMzMfNxVWGpegD8UKG GF80>

Minnesota doctor shortage dilemma

http://www.kare11.com/sports/sports_article.aspx?storyid=493988

NELN.ORG NEWS: The National Elder Law Network, www.neln.org (formerly the Kansas Elder Law Network) is back on-line with new and updated bibliographies, articles, and consumer-oriented materials. This week's featured article: Guardianships and Conservatorships in Minnesota, by Vicki McIntyre, at <http://neln.org/Articles/Article43/>. The article provides a consumer-focused overview of the guardianship/conservatorship system in Minnesota and a list of resource links.

A complete list of [NELN.org](http://neln.org) topical coverage is available at <http://neln.org/topics.asp>.

UPCOMING CLE PROGRAMS

Combining a Career in Law and Care-Giving in Life

Thursday, February 21, 2008, 7:30 - 9:00 a.m.

William Mitchell College of Law

Application has been made for 1 CLE credit.

Online registration is available at

<http://www.wmitchell.edu/news/events/event.asp?mo=2&ye=2008&id=3763>

Practice Skills for a Growing Market: Grandparent Custody Cases

Friday, February 22, 2008, 1:00 - 4:00 p.m.

Room 125, William Mitchell College of Law

Application has been made for 3 CLE credits. Early registration deadline is February 15, 2008.

Online registration is available at

<http://www.wmitchell.edu/news/events/event.asp?mo=2&ye=2008&id=3867>

MA '08: Barg, Trying Appeals, & Working with Waivers

Monday, March 3, 2008, 9:00 a.m. - 4:30 p.m.

Minnesota CLE Conference Center, 3rd Floor City Center, Minneapolis

Application has been made for 6.25 CLE credits.

Online registration is available at www.minncle.org

ELDER LAW SECTION ACTIVITIES

NOMINATIONS FOR ELDER LAW SECTION GOVERNING COUNCIL: The Nominating Committee is seeking nominations from members interested in serving on the Elder Law Section's Governing Council. The Council meets at 3:30 p.m. on the second Friday of every other month at MAO Legal Services in Minneapolis. Outstate members may attend by phone. Council members serve a two-year term. Members nominated at the Governing Council meeting on April 11, 2008, and elected at the Annual Meeting in June, will serve from July 1, 2008 through June 30, 2010. For more information, or to place your name on the ballot to serve on the Governing Council, please contact Nominating Committee Chair Lori Guzman at lori@guzmanlaw.com.

MEDICAL ASSISTANCE COMMITTEE MEETING: The next Medical Assistance committee meeting will be at 3:30 p.m. on Tuesday, February 19, 2008, at the MAO Offices, 2021 E. Hennepin, Suite 200, Minneapolis. For directions, or to attend by phone, please contact Tracie Fenske with Long, Reher & Hanson, P.A. at 952-929-0622.

LEGISLATIVE COMMITTEE MEETING. The next Legislative Committee meeting will be at 12:30 p.m. on Monday, February 25, 2008, at the law offices of Suzanne Sandahl, 7400 Lyndale Avenue South, Minneapolis. The meeting will conclude by 2:00 p.m. and is open to all interested section members. The final draft of the MSBA bill containing Probate and Trust and Real Property section proposals approved by the MSBA will be reviewed at this meeting, as well as other developments of potential interest to elder law attorneys. Section members who wish to attend by telephone should call Suzanne Sandahl's office at 612-866-6000 prior to the meeting.

MINNESOTA CASES

Federal District Court of Minnesota case, from MSBA Court Opinions:

MONY Life Ins. Co. v. Ericson

Civ. No. 07-1547 (RHK/JSM) (D.Minn. 1/23/2008)
RICHARD H. KYLE, United States District Judge

DESCRIPTION FROM COURT'S WEBSITE:

Cross-Motions for Summary Judgment, Fed. R. Civ. P. 56(c); competing declaratory judgment claims to proceeds of life-insurance policy, constitutionality of Minnesota Statutes section 524.2-804 under Article 1, Section 10, clause 1 of the United States Constitution (Contracts Clause).

FACTS: Life Insurance policy issued to wife with husband as beneficiary in 1980. Couple divorced in 1986. Policy remained in place with ex-husband beneficiary paying premiums. Minn. Stat. section 524.2-804 signed into law in 2002. Policy holder died in 2006.

HOLDING: Minn. Stat. section 524.2-804, which provides that "the dissolution or annulment of a marriage revokes any revocable . . . beneficiary designation . . . made by an individual to the individual's former spouse in a governing instrument" is unconstitutional under the Contracts Clause to the U.S. and Minnesota Constitutions, as applied retroactively to the ex-husband under the facts of this case.

MSBA SUMMARY EXCERPTS FROM THE DECISION:

"MONY commenced this interpleader action, naming Ericson and the Daughters as Defendants. Ericson cross-claimed against the Daughters, seeking a declaration that he is entitled to the Policy proceeds [upon his ex-wife's death] because the retroactive application of Section 524.2-804 to him is unconstitutional. The Daughters, in turn . . . seek[] a declaration that they are entitled to the Policy proceeds. . . . In a factual setting nearly identical to that presented here, the Eighth Circuit addressed a Contracts-Clause challenge to an Oklahoma revocation-upon-divorce statute similar to Section 524.2-804. . . . This case is on all fours with Whirlpool. . . . Recognizing that Whirlpool presents a substantial hurdle to their case, the Daughters attempt to explain away that decision. They argue that Whirlpool has been roundly criticized and that the Court should give 'little, if any, weight' to that decision. . . . These authorities note several so-called

flaws in Whirlpool's analysis, the most critical being its failure to distinguish between contracts and donative transfers . . . While commentators (like the Joint Editorial Board) and courts outside of the Eighth Circuit (such as the Tenth Circuit) are free to disregard Whirlpool, this Court is not. . . The Daughters also argue that, under the doctrine of *stare decisis*, this Court should follow Heitz [a D.Minn. decision in 2007], which concluded that the retroactive application of Section 524.2-804 was constitutional. . . Yet, the undersigned is not obligated, by *stare decisis* or otherwise, to reach the same conclusion as Heitz. See, e.g., Colby v. J.C. Penney Co., 811 F.2d 1119, 1124 (7th Cir. 1987) ('district judges . . . must not treat decisions *by other district judges*, [even in the same circuit], as controlling') (emphasis in original); Starbuck v. City & County of San Francisco, 556 F.2d 450, 457 n.13 (9th Cir. 1977) ('The doctrine of *stare decisis* does not compel one district court judge to follow the decision of another.'). . . Given the significant criticisms of Whirlpool, the Eighth Circuit might well decide that case differently today. And perhaps the parties here will afford the appellate court an opportunity to do so. Whether that occurs, however, is not up to this Court." [bracketed abridgements and ellipsis by MSBA]

NOTE: Appeal or motion for post-judgment relief must be filed within 30 days of entry of judgment.

The complete opinion may be accessed at: [MONY Life Ins. Co. v. Ericson](#)

STATUTES, REGULATIONS, BULLETINS

Nothing to report this week.

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 ymcintyre2@yahoo.com