

MSBA ELDER LAW SECTION E-NEWSLETTER JANUARY 20, 2009

E-Newsletter Editorial Staff:

Newsletter Committee Chair: Laurie Hanson, Esq.

Editor in Chief: Suzy Scheller, Esq.

Contributors: Joel Smith, Esq., Peter Hendricks, Esq., Amanda Christman, Esq., Laurie Hanson, Esq., Julian Zweber, Esq., Vickie McIntyre, Esq.

E-NEWSLETTER UPDATE: HONORING THE PAST, ANTICIPATING THE FUTURE

Submitted by Laurie Hanson, Esq., Newsletter Chair

On January 5, 2008 the Newsletter Committee of the Elder Law Section met. The Minutes of the Section are on the website and can be found at:

<http://www2.mnbar.org/sections/elder-law/minutes.asp>.

As many of you know, Vicki McIntyre is the founding Editor and the main force behind the success of this Newsletter. She is also the Vice Chair of the Elder Law Section. In anticipation of her assumption of the duties as Chair of the Section in July, Vicki has decided to step down as Editor in Chief, but will thankfully remain a member of the Newsletter Committee. *I know that I echo the sentiments of the Newsletter Committee, the Council, and the Section in thanking Vicki for her dedication and stellar work over the past 18 months on the newsletter.* In keeping with her work ethic, Vicki would not leave the helm of the newsletter without ensuring that it was in good hands. We are happy to report that Suzy Scheller, an associate with the law firm of Pearson, Randall, Schumacher & LaBore, P.A., is taking on the duties of Editor in Chief. She has been working with Vicki over the past few months and served as Guest Editor since December 1st. Please feel free to contact Suzy at sscheller@prslegal.com if you would like to submit articles or if you have questions.

One more change: Irena Purves has been working behind the scenes submitting the “articles of interest” in the Newsletter each week. She is moving to Chicago and will no longer be submitting those articles. A heartfelt thanks to Irena as well. She has been combing various resources, week after week since September 2007, to bring you articles pertinent to the practice of Elder Law in Minnesota. Joel Smith, of Kosieradzki Smith Law Firm, LLC, will take over Irena’s duties and submit the News each week.

Again, thank you Vicki, Suzy, Irena and Joel for taking on these responsibilities. You are doing a great service to our members.

You will be receiving a survey from the Newsletter Committee soon. The purpose of the survey is to determine the effectiveness of our Newsletter. Please take the time to complete the five minute survey. Please feel free to contact Laurie Hanson at lhanson@mnelderlaw.com or

Suzy Scheller at sscheller@prslegal.com if you have any questions regarding the Newsletter or if you want to join the Newsletter Committee.

NEW “POMS” FOR TRUSTS

A new Programs Operations Manual System (“POMS”), used by Social Security Administration employees to administer Social Security and Supplemental Security Income, has recently been issued for trusts under the heading *SI 01120.200 Trusts – General, Including Trusts Established Prior to 1/1/00, Trusts Established with the Assets of Third Parties and Trusts Not Subject to Section 1613(e) of the Social Security Act*.

The manual can be found at:

<https://secure.ssa.gov/apps10/poms.nsf/lrx/0501120200!opendocument>.

RESPONDENT’S BRIEF FILED IN BARG

On January 5, 2009, the Brief in Opposition to Petition for Writ of Certiorari was filed in the United States Supreme Court by the Respondent, Michael F. Barg. Mille Lacs County filed a Petition for Writ on November 3, 2008, under the name *Leo Vos, Director, Mille Lacs County, Minnesota, Family Services and Welfare Department, Petitioner v. Michael F. Barg*. At its next conference, the Court will decide whether to accept the Petition for Writ, reject the Petition, or request that the Solicitor General file a brief to set forth the Obama administration's position on the issues raised by the Petition.

In the meantime, DHS has instructed all county collection units to delay settlement of Barg-type claims, pending resolution of the Petition for Writ. Supreme Court Docket entries can be found at: <http://origin.www.supremecourtus.gov/docket/08-603.htm>.

ELDER LAW NEWS

Minnesota / Warning signs of elder abuse publicized; Nursing home reports prompt action

http://www.twincities.com/ci_11475142?IADID=Search-www.twincities.com-www.twincities.com

Minneapolis / Family members of victim in salmonella outbreak plan suit

http://www.twincities.com/ci_11465646?IADID=Search-www.twincities.com-www.twincities.com

We save tax free for college — why not for long-term care?

http://www.twincities.com/ci_11447244?IADID=Search-www.twincities.com-www.twincities.com

Investigators: Caught on Camera -- Investigator shows what it finally took to get people to listen to a 92-year-old woman

<http://www.myfoxtwincities.com/myfox/pages/Home/Detail;jsessionid=43D8CFB18E132A61F5021EDC F6DC197D?contentId=8237690&version=1&locale=EN-US&layoutCode=VSTY&pageId=1.1.1&sflg=1>

2009 Minnesota legislative session begins this week; budget shortfall means less to spend on nursing homes and health care for the poor and disabled

http://www.twincities.com/cj_11361587?IADID=Search-www.twincities.com-www.twincities.com

UPCOMING EVENTS AND CLE PROGRAMS

Probate Series: Financial Exploitation of Elderly

Live Webcast Presentation

January 21, 2009, 10:00 - 11:00 am

Contact Information: <http://www.minncle.org/SeminarsSearch.asp> or 1 800-759-8840.

Probate Series: Tax Preparer Rules

Live Webcast Presentation

January 21, 2009, 12:00 - 2:00 pm

Contact Information: <http://www.minncle.org/SeminarsSearch.asp> or 1 800-759-8840.

Pooled, Special, and Supplemental Needs Trusts From Start To Finish

RCBA Seminar

January 21, 2009 from 3:00 – 5:00 p.m.

Contact Information: <http://www.ramseybar.org/calendar.html#january> or 651-222-0846.

Probate Series: 8 Most Difficult Ethical Issues

Live Webcast Presentation

January 22, 2009, 9:00 - 11:00 am

Contact Information: <http://www.minncle.org/SeminarsSearch.asp> or 1 800-759-8840.

Probate Series: Estate Plan in Depressed Economy

Live Webcast Presentation

January 22, 2009, 12:00 - 1:00 pm

Contact Information: <http://www.minncle.org/SeminarsSearch.asp> or 1 800-759-8840.

The New Transfer on Death Deed (TODD) Legislation

Video Replays

January 23, 2009 - Duluth

Contact Information: <http://www.minncle.org/SeminarsSearch.asp> or 1 800-759-8840.

Elder Law: Reverse Mortgages, Long-Term Care Insurance, and Planning for Old Age

HCBA Live Replay

January 23, 2009 at 12:00 p.m.

Contact Information: <https://www.hcba.org/CLE-Events/CLE-tele-seminars.htm> or 612-752-6600.

ABCs of Will and Trust Drafting Plus Planning for Dementia & Incapacity

Live Presentation

February 6, 2009, 9:00 am – 4:15 pm

Contact Information: <http://www.minncle.org/SeminarsSearch.asp> or 1 800-759-8840.

Hospice Minnesota's 2009 End-of-Life Conference

Mystic Lake Casino Hotel, Prior Lake, MN

April 6 - 7, 2009

Contact Information:

<http://www.mnhospice.org/displaycommon.cfm?an=1&subarticlenbr=197> or 651-659-0423.

ELDER LAW SECTION ACTIVITIES

VULNERABLE ADULTS COMMITTEE MEETING: The new VA Committee will meet for the first time on January 29, 2009, at Noon, at the offices of Pearson, Randall, Schumacher & LaBore, P.A., Fifth Street Towers, 100 South Fifth Street, Suite 1025, Minneapolis, MN 55402; 612.767.7500. Please contact Ken LaBore (KLaBore@prslegal.com) or Joel Smith (joel@koslawfirm.com) with interest.

GOVERNING COUNCIL MEETING: The next meeting of the Elder Law Section Governing Council will be at 3:30 p.m. on Friday, February 13, 2008, at the MAO offices, 2021 E. Hennepin, Suite 200, Minneapolis. All members are welcome to attend. To participate by phone, please contact Karla Nelson with Schmitz & Schmidt, P.A., at 651-291-2405.

MINNESOTA CASES

Following is a Minnesota Court of Appeals published decision released on January 13, 2009.

A07-2103

Barbara Wilhite, Relator, vs. Scott County Housing and Redevelopment Authority, Respondent. Scott County Housing and Redevelopment Authority.

Failure to vacate a leased residential premises upon the expiration of the lease constitutes a serious lease violation under 24 C.F.R. § 982.552(b)(2) (2008), mandating the termination of Section 8 Rental Assistance. Affirmed.

The decision is available at: <http://www.mncourts.gov/opinions/coa/current/opa072103-0113.pdf>

Following is a Minnesota Court of Appeals unpublished decision released on January 13, 2009.

A08-0781

In re the Marriage of: Francisco Puga, petitioner, Respondent, vs. Lucia Vaglienti, respondent, Estate of Lucia Vaglienti, deceased, Appellant.

LARKIN, Judge

In this post-dissolution appeal, wife's estate argues that the district court abused its discretion by ordering termination of Respondent's term life-insurance policy that was mandated by the parties' dissolution decree. After Vaglienti's death in 2007, Appellant began paying premiums on the policy and argued that it was the owner of the policy. Appellant further argues that the life-insurance policy was awarded to wife as an asset in the decree's property division and that the district court improperly modified the property division when it terminated the policy. We conclude that the life-insurance policy was security for respondent's spousal-maintenance obligation, not an award of property, and that the district court did not abuse its discretion by terminating the policy after wife's death. We affirm.

The decision is available at: <http://www.mncourts.gov/opinions/coa/current/opa080781-0113.pdf>

Unpublished opinions may not be cited except as provided by Minn. Stat. Section 480A.08, Subd. 3 (2006).

Following is a Minnesota Court of Appeals unpublished decision released on January 13, 2009.

A08-0271

In the Matter of Nina Gorokhova & Vladimir Barkhudarov

PETERSON, Judge

Relator challenges respondent agency's calculation of family income for public-housing-subsidy purposes, arguing that the agency (1) should have given relator a standard \$20 exclusion; and (2) should not have included a state-funded dietary allowance in income. We affirm with respect to the \$20 exclusion and reverse and remand with respect to the dietary allowance.

The decision is available at: <http://www.mncourts.gov/opinions/coa/current/opa080271-0113.pdf>.

Unpublished opinions may not be cited except as provided by Minn. Stat. Section 480A.08, Subd. 3 (2006).

Following is a Minnesota Court of Appeals unpublished decision released on January 6, 2009.

A08-0515

William D. Paul, Appellant, vs. Gerald J. Brown, as Trustee for the Heirs of Mairead Kenney, deceased, Respondent, Rosemary Kenney, Respondent, vs. A Plus Enterprises, Inc., et al., Defendants, Keith Byron Levings, et al., Third-Party Defendants, vs. Allstate Insurance Company, Intervenor.

STONEBURNER, Judge

Appellant challenges the district court's denial of his motion to establish and enforce an attorney's lien on settlement proceeds received by respondents, his former clients. Because the district court did not abuse its discretion in permitting discovery and did not err in its application of Minn. Stat. § 481.13 (2008), to the facts, we affirm.

Unpublished opinions may not be cited except as provided by Minn. Stat. Section 480A.08, Subd. 3 (2006).

STATUTES, REGULATIONS, BULLETINS

DHS BULLETIN #09-01-02: Statewide Waiver of Time Limit for Able-Bodied Adults without Dependents. Previously, able-bodied adults without dependents (“ABAWDs”) could only receive Food Stamps for 3 months but may now be eligible for 12 months. On December 31, 2008, Minnesota received approval from the Food and Nutrition Service (FNS) for a statewide waiver of the ABAWDs work requirements in 7 C.F.R. § 273.24(f)(2)(ii). The new waiver is in effect until December 31, 2009. Due to this statewide ABAWDs waiver, Minnesota’s Food Support Employment and Training (FSET) program has changed from a mandatory to a voluntary program, effective January 1, 2009. The bulletin, dated January 9, 2009, is available at: http://www.dhs.state.mn.us/main/groups/publications/documents/pub/dhs16_143896.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 E-Newsletter contributions by noon on Saturday of each week to Suzy Scheller at sscheller@prslegal.com.

If you do not wish to receive this E-Newsletter, send your request to be removed from the mailing list to Kim Basting at kbasting@statebar.gen.mn.us.