

MSBA ELDER LAW SECTION E-NEWSLETTER MARCH 3, 2009

E-Newsletter Editorial Staff:

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REMINDER: NOMINATIONS OPEN FOR GOVERNING COUNCIL

Nominations are now being accepted for Elder Law Section Governing Council and officer positions. Governing Council members serve a two-year term, beginning in June 2009. Officer terms are for one year. If you are interested in serving as a Governing Council member or officer, or if you wish to nominate someone for a member or officer position, please contact Nominations Chair Dan Steinhagen at dsteinhagen@steinhagen-crist.com by April 1, 2009.

FOCUS ON GUARDIANS AND CONSERVATORS, CONTINUED

The focus on guardianships and conservatorships from last week's E-Newsletter edition continues. A bill was introduced in both the Senate and House to propose that Minnesota adopt the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA). SF 412 and HF 632 address interstate issues related to guardianships, such as authorizing communication between courts and providing for a determination of an appropriate forum.

Also, last week, a newspaper article was published about an Excelsior woman whose assets were reportedly depleted based on the decisions of her guardian. Please see the information below to provide additional perspective on the case.

Submitted by Ruth Ostrom, Esq.

A response to the article from Ruth Ostrom, Esq., attorney for Ms. Greer's guardian, provides additional information not reported in the article and is available on the *What's New* section of the Elder Law website at:
<http://www2.mnbar.org/sections/elder-law/WhatsNew.asp>.

Submitted by Monica Lewis, Esq.

The Star Tribune recently reported an article about an Excelsior woman who had a professional guardian. (See reference to the article in our last newsletter.) This was a "whistleblower" article that implied that the professional guardian and conservator had

somehow mismanaged (or worse) the woman's money until her \$600,000+ was "gone." Gauging from the reactions to the article, the Star Tribune was successful in pinning the blame for this woman's situation on the professionals. The article was written two weeks ago, yet the case was over in the spring of 2007.

I am not an attorney on this case and I have not been personally involved with it in any way. All of my observations are based on the facts as reported in the Star Tribune article.

The article stated that two of the woman's children petitioned for guardianship and conservatorship because the woman was about to inherit a large sum of money from her sister. The Court typically *wants* family members to be the fiduciary and family has priority under the law. In this case, the article said, because of fighting family members, a professional was agreed to *by the family*. The woman was found malnourished, dehydrated and with bedsores. Her drug addict son was living with her. It strikes me as odd that the family wasn't involved with her to the extent that she had to be hospitalized from lack of care but that when a "large sum" was on the horizon, they are fighting to get involved.

The Star Tribune article said that most of the woman's money was spent on her health care. What's wrong with that? It certainly sounded like she needed the care. A large amount was also apparently spent on attorneys' fees. Attorneys' fees get large when people are constantly going to court fighting over every issue or if they are constantly changing attorneys. The article stated that the woman was restored to capacity when her money ran out, insinuating that the professionals had nothing more to milk. I find it ironic that all of a sudden the family could agree -- when the money ran out and the drug addict son was dead.

I don't think professional fiduciaries are in all cases blameless. But the story between the lines in this article is clearly a dysfunctional family that created and exacerbated a bad situation. It is misleading to blame the professionals.

ELDER LAW NEWS

Health-Care Focus Next for Obama in Speech, Budget Proposal

<http://www.bloomberg.com/apps/news?pid=20601087&sid=aAjCUBMi5IIU&refer=home>.

Nursing Home Watchdogs Muted by Bush Regulation

<http://www.bloomberg.com/apps/news?pid=washingtonstory&sid=aGc2PNd3vVLs>.

Bill Proposed to Protect Vulnerable Adults

<http://kaaltv.com/article/stories/S806466.shtml?cat=10217>.

Dementia - and its dangers - overlooked, elder advocates say following Verne Gagne incident

http://www.twincities.com/health/ci_11755347?source=rss.

Welcome to the future of nursing homes

<http://www.startribune.com/local/east/40261707.html?elr=KArksLckD8EQDUoaEyqyP4O:DW3ckUiD3aPc: Yyc:aUnciatkEP7DhUsr>.

UPCOMING EVENTS AND CLE PROGRAMS

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

Video Replay

March 6, 2009 – Duluth

March 6, 2009 – Marshall

March 11, 2009– Minneapolis

March 12, 2009 – Moorhead

March 13, 2009 – Mankato

March 13, 2009 – Albert Lea

March 19, 2009 – St. Cloud

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

Medical Assistance and Long Term Care 2009

Live Presentation

March 16, 2009, 8:30 am – 4:30 pm

Video

April 6 & 21, 2009 – Minneapolis

April 24, 2009 – Mankato

April 29, 2009 – Moorhead

May 7, 2009 – St. Cloud

May 29, 2009 - Duluth

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

Hot Topics in Elder Law

HCBA Presentation

March 23, 2009, Noon

Contact Information: <http://www.hcba.org/intus/Event3/event.asp> or 612-752-6600.

Tools of the Trade – Strategic Planning in Elder Law

HCBA Video Presentation

March 25, 2009, 8:30 am

Contact Information: <http://www.hcba.org/intus/Event3/event.asp> or 612-752-6600.

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: Long Term Care and Financial Planning

RCBA Live Presentation

April 15, 2009, 3:00 – 5:00 p.m.

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

ELDER LAW SECTION ACTIVITIES

2ND ANNUAL NATIONAL HEALTHCARE DECISIONS DAY (NHDD): NHDD is scheduled for Thursday, April 16, 2009. The Governing Council of the MSBA Elder Law Section will serve as Minnesota state liaison. Volunteers are needed to: (1) sponsor an NHDD event around April 16th; (2) work at a sponsored event; and (3) join the state liaison committee to secure new sponsors and support the committee's initiatives. Contact Vicki McIntyre at vmcintyre2@yahoo.com for more information or to volunteer.

GOVERNING COUNCIL MEETING: The next meeting of the Elder Law Section Governing Council will be at 3:30 p.m. on Friday, April 17, 2009, 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.

VULNERABLE ADULT COMMITTEE MEETING: The next meeting of the Vulnerable Adult Committee will be Thursday, April 30, at Noon, at the offices of Pearson, Randall, Schumacher & LaBore, P.A., 100 S. 5th Street, Suite 1025, Minneapolis, 612.767.7500. Contact co-chairs Ken LaBore at klabore@prslegal.com or Joel Smith at joel@koslaw.com for more information.

ELDER LAW SECTION ANNUAL MEETING: The annual meeting of the Elder Law Section will be on June 9, 2009. More details to follow.

MINNESOTA CASES

Following are three Minnesota Court of Appeals unpublished decisions released on February 24, 2009.

A08-0373

Ayan Hassan, Relator, vs. Dakota County Community Development Agency, Respondent.

KLAPHAKE, Judge

Relator Ayan Hassan challenges respondent Dakota County Community Development Agency's (CDA) termination of her Section 8 public housing benefits and its demand that

she repay \$4,584 in rental assistance benefits she received from July through December 2007. The CDA terminated relator's benefits, alleging that she failed to provide proper 2006 tax documents and failed to report that her husband had moved into her rent-assisted unit in June 2007. Because we conclude that (1) the CDA decision is not supported by substantial evidence that she failed either to provide proper tax documents or that her husband had moved into her rent-assisted unit; and (2) the CDA decision is arbitrary and capricious because it failed to consider evidence of relator's poor English proficiency and the effect that termination of her rental assistance would have on her five young children, we reverse.

The decision is available

at: <http://www.courts.state.mn.us/opinions/coa/current/opa080373-0224.pdf>.

A08-0374

Angela Sandstrom, Relator, vs. Dakota County Community Development Agency, Respondent.

WORKE, Judge

Relator challenges the termination of her Section-8-housing benefits for failure to report employment, arguing that respondent-agency failed to consider alleged mitigating circumstances, such as relator's pregnancy, lack of other housing, and low amount of overpayment as a result of not reporting employment (\$24). Because the law makes no distinction between minor or major violations and relator was aware of her need to report employment, we affirm.

The decision is available

at: <http://www.courts.state.mn.us/opinions/coa/current/opa080374-0224.pdf>.

A08-0396

JoAnn Helfman, on behalf of the Estate of James R. Helfman, Appellant, vs. Ruth Ann Johnson, et al., Respondents.

WORKE, Judge

On appeal from a determination of damages in a minority shareholder dispute, appellant, on behalf of her husband's estate, argues that the district court erred in (1) applying a discount to the valuation of the corporation; (2) awarding damages based on 18.75% ownership rather than 23.75%; and (3) not allowing additional distributions for 2003. Because appellant did not meet her burden of showing how the damage calculation was inaccurate, we affirm.

The decision is available

at: <http://www.courts.state.mn.us/opinions/coa/current/opa080396-0224.pdf>.

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

STATUTES, REGULATIONS, BULLETINS

DHS BULLETIN #09-21-03: DHS ELIMINATES INPATIENT HOSPITAL LIMIT FOR CERTAIN MINNESOTACARE ADULTS WITH CHILDREN AND MINNESOTACARE SLIDING FEE SCALE PREMIUM REDUCTIONS. Effective April 1, 2009, the \$10,000 inpatient hospital limit for MinnesotaCare adults in families with children with income within a certain range above the Federal Poverty Guidelines (FPG) will be eliminated. Effective for May 2009 premiums, a 2003 increase to the MinnesotaCare sliding fee scale, resulting in lower premiums for some MinnesotaCare households, will also be eliminated. The bulletin, dated February 24, 2009, is available at:

http://www.dhs.state.mn.us/main/groups/publications/documents/pub/dhs16_144302.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 Suzy Scheller at sscheller@prslegal.com.

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