

## **MSBA ELDER LAW SECTION E-NEWSLETTER**

**April 28, 2009**

### **E-Newsletter Editorial Staff:**

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### **NEED LAW STUDENT HELP? - CONTACT MJF**

The Minnesota Justice Foundation (MJF) is a resource for volunteer and/or low cost law student help for elder law attorneys, whether non-profit or private firms. Students perform a variety of tasks, including legal research, document drafting, client intake and interviewing, and even courtroom representation. Often, students also possess foreign language or other skills of value to elder law attorneys and can assist with pro bono clients. MJF staff attorneys at each of the four Twin Cities law schools match needs to volunteers. To request a volunteer, please contact a MJF staff attorney at:

[hamline@mnjustice.org](mailto:hamline@mnjustice.org) (651.523.2081); [stthomas@mnjustice.org](mailto:stthomas@mnjustice.org) (651.962.4859); [uofm@mnjustice.org](mailto:uofm@mnjustice.org) (651.625.4854); and [wmitchell@mnjustice.org](mailto:wmitchell@mnjustice.org) (651.290.9568).

### **RALLY FOR INCREASED LONG TERM CARE FUNDING**

For those interested in long term care funding, join caregivers, consumers, community members, and providers at the Capitol on Tuesday, April 28, at 1:30 p.m., to ask legislators to "Prioritize for the Future" and increase funding for long term care.

### **ELDER LAW NEWS**

Power of attorney, yet powerless

<http://m.startribune.com/topic/4193-Most%20Popular%20Stories/articles/191256133>

Letter of the day: Vulnerable people need more protection in Minnesota

[http://www.startribune.com/opinion/letters/43313192.html?elr=KArksc8P:Pc:Ug8P:Pc:UiD3aPc:\\_Yyc:aULPQL7PQLanchO7DiUr](http://www.startribune.com/opinion/letters/43313192.html?elr=KArksc8P:Pc:Ug8P:Pc:UiD3aPc:_Yyc:aULPQL7PQLanchO7DiUr)

Editorial: State needs shot of home health reform

[http://www.startribune.com/opinion/editorials/43201842.html?elr=KArks:DCiUBcy7hUiD3aPc:\\_Yyc:aUU](http://www.startribune.com/opinion/editorials/43201842.html?elr=KArks:DCiUBcy7hUiD3aPc:_Yyc:aUU)

Partners in Aging is helping seniors live at home longer

<http://www.republican-eagle.com/articles/index.cfm?id=58567&section=homepage>

Most nursing home residents soon to receive \$250 as part of stimulus bill

<http://www.mcknights.com/Most-nursing-home-residents-soon-to-receive-250-as-part-of-stimulus-bill/article/131297/>

Nursing Homes Rest Easy For Now Despite Economy's Ills

[http://money.cnn.com/news/newsfeeds/articles/djf500/200904231651DOWJONESDJONLINE001019\\_FORTUNE5.htm](http://money.cnn.com/news/newsfeeds/articles/djf500/200904231651DOWJONESDJONLINE001019_FORTUNE5.htm)

Editorial: Share the pain

<http://www.dglobe.com/event/article/id/21547/>

Minnesota hospitals detail dire fallout of state cuts

[http://www.twincities.com/ci\\_12203658](http://www.twincities.com/ci_12203658)

State report cites Good Sam for neglect – Local nursing home appeals decision

<http://www.albertleatribune.com/news/2009/apr/21/state-report-cites-good-sam-neglect/>

Legislators vow support for nursing home collaborative

<http://www.timberjay.com/current.php?article=5280>

### **UPCOMING EVENTS AND CLE PROGRAMS**

#### **Medical Assistance and Long Term Care 2009**

##### **Video**

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.

#### **The Basics of Elder Law: A Critical Course for Every Attorney Whose Clients are Getting Older**

##### **Live Presentation**

May 18, 9:00 am

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

#### **Probate & Trust Law Section Conference**

June 8 - 9, 2009

Saint Paul RiverCentre

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

**Elder Law Institute**  
October 8-9, 2009  
Minnesota CLE Conference Center

### **ELDER LAW SECTION ACTIVITIES**

**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. 5<sup>th</sup> Street, Suite 1025, Minneapolis, 612.767.7500. Contact co-chairs Ken LaBore at [klabore@prslegal.com](mailto:klabore@prslegal.com) or Joel Smith at [joel@koslaw.com](mailto:joel@koslaw.com) for more information.

**ELDER LAW SECTION ANNUAL MEETING AND GOVERNING COUNCIL MEETING:** The annual meeting of the Elder Law Section will be on June 9, 2009 at 1:00 p.m. at RiverCentre in St. Paul (following the Probate and Trust Law Annual Conference). This meeting serves as the next Governing Council meeting as well.

**MA COMMITTEE MEETING:** The next MA Committee meeting will be at 3:30 p.m. on Tuesday, June 16, 2009, at the MAO Offices, 2021 E. Hennepin, Suite 200, Minneapolis. Topics for the meeting may be submitted to MA Committee Chair, Cathryn Reher, at [creher@mnelderlaw.com](mailto:creher@mnelderlaw.com), or faxed to 952-542-9201. For directions, or to attend by phone, please contact Tracie Fenske with Long, Reher & Hanson, P.A. at 952-929-0622.

### **MINNESOTA CASES**

*The following are two unpublished cases from the Minnesota Court of Appeals released April 21, 2009.*

**A08-0492**

**Deborah Artishon, Appellant, vs. Estate of Mavis Corrine Swedberg, Respondent, Christopher Middlebrook as Personal Representative, Defendant, Liberty Mutual Group, Respondent, St. Paul Guardian Insurance Company, Respondent.**

WORKE, Judge

Appellant challenges the district court's grant of summary judgment in favor of respondents, arguing that (1) the appointment of the personal representative was proper and service on the personal representative was within the statute-of-limitations period, and (2) service on respondent insurers was effective because appellant complied with the requirements of Minn. Stat. § 45.028 (2008) before the statute of limitations ran. We affirm.

The decision is available at:

<http://www.lawlibrary.state.mn.us/archive/ctapun/0904/opa080492-0421.pdf>.

**A08-0911**

**In re: Pearl F. Dynan Living Trust Under Agreement dated November 30, 1992,  
Eric C. Dammeyer, Trustee.**

STONEBURNER, Judge

Discovery of contamination on property owned by a trust resulted in the delay of distribution of a bequest to appellant and created a question about the appropriate valuation date for the bequest. Appellant challenges the district court's order determining the valuation date of March 1999, which is based, in part, on the district court's assumption that contamination was substantially remediated or no longer affected the value as of that date. Appellant argues that (1) the evidence does not support the district court's finding about the status of remediation in March 1999; (2) the district court erroneously substituted its discretion for the discretion of the trustee who valued the bequest as of October 2003; and (3) as a matter of law, appellant's distribution is a "fractional share" that is to be valued on the actual date of distribution. Because the district court's finding about the status of remediation on March 1999 is clearly erroneous and the district court failed to address the trustee's exercise of discretion, we reverse and remand for further proceedings.

The decision is available at:

<http://www.lawlibrary.state.mn.us/archive/ctapun/0904/opa080911-0421.pdf>.

*Unpublished opinions may not be cited except as provided by Minn. Stat. Section 480A.08, Subd. 3 (2008).*

## **STATUTES, REGULATIONS, BULLETINS**

**DHS BULLETIN #09-25-03: DHS TEMPLATE FOR ELDERLY WAIVER AND ALTERNATIVE CARE CONTRACTS.** In 2008, the Centers for Medicare/Medicaid Services (CMS) renewed Minnesota's elderly HCBS waiver for a period of five years. At that time, CMS expressed concern regarding the assurance of provider access for all qualified providers and the related concern of access and choice for waiver participants. In order to address this concern DHS agreed, as a condition of the renewal, to require all counties and tribes to use a standardized contract template issued by DHS to be

implemented in 2009, which is discussed in the bulletin. The bulletin, dated April 20, 2009, is available at:

[http://www.dhs.state.mn.us/main/groups/publications/documents/pub/dhs16\\_144764.pdf](http://www.dhs.state.mn.us/main/groups/publications/documents/pub/dhs16_144764.pdf).

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**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>

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Please send eNewsletter contributions by noon on Saturday of each week to Suzy Scheller at [sscheller@prslegal.com](mailto: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](mailto:kbasting@statebar.gen.mn.us).