

MSBA ELDER LAW SECTION E-NEWSLETTER

June 2, 2009

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IMPORTANT DEVELOPMENT IN THE *BARG* CASE

Submitted by Julian J. Zweber

On May 29, 2009, the U.S. Solicitor General filed an Amicus Brief in the United States Supreme Court in response to Mille Lacs County's Petition for Writ of Certiorari in the *Barg* case (*Leo Vos, Director, Mille Lacs County, Minnesota, Family Services and Welfare Department, et al., v. Michael E. Barg, U.S. Supreme Court Docket No. 08-603*). The Solicitor General advised the Court that the petition for writ of certiorari should be denied. The Brief advised the U.S. Supreme Court in no uncertain terms that the Minnesota Supreme Court reached the correct decision in *Barg*, that the Petitioner's arguments for reversal were incorrect under federal law, and that any differences between apparently contrary decisions reached by the North Dakota Supreme Court and the Minnesota Supreme Court in *Barg* could be explained by differences in the way those Courts viewed the different state laws, thereby not warranting further review by the U.S. Supreme Court to resolve any conflict between the two Courts. The Solicitor General's Brief increases the possibility that the U.S. Supreme Court will decide whether to approve or deny Mille Lacs County's petition for Writ of Certiorari before the Court's current term ends on June 30.

To circumvent the result reached by the Minnesota Supreme Court in *Barg*, the 2009 Legislature has passed a number of amendments to Minn. Stat. § 256B.15. These amendments redefine the marital property rights of spouses where one or both receive medical assistance benefits, but only for purposes of medical assistance estate recovery. The redefinition of marital property rights only applies to spouses where one or both receive medical assistance benefits. See Laws of 2009, Ch. 79, Art. 5, Secs. 39 to 42. These amendments become effective July 1, 2009. Whether these amendments will prove successful in circumventing the Minnesota Court's decision in *Barg* will likely be the subject of litigation in future cases. These amendments will also have to be approved by the Centers for Medicare and Medicaid Services before they can be implemented. Since the Acting General Counsel, Associate General Counsel, the Deputy Associate General Counsel and other Attorneys for the Department of Health and Human Services joined in the Solicitor General's Brief, approval of the 2009 amendments might not be as easily obtained as under the Bush Administration. For the hundreds of cases waiting for

a final disposition of the Barg case, the light at the end of the tunnel may be coming sooner than previously expected.

The Solicitor General's Brief is available at:

<http://www.usdoj.gov/osg/briefs/2008/2pet/6invit/2008-0603.pet.ami.inv.html>.

ELDER LAW NEWS

All in the family: Helping to care for caregivers

http://www.startribune.com/lifestyle/health/46420447.html?elr=KArksLckD8EQDUoaEyqyP4O:DW3ckUiD3aPc:_Yyc:aUUsZ

Investigators: The Power of One (Minnesota lawmakers have granted new rights for the tens of thousands of Minnesotans who require the help of a conservator or guardian)

http://www.myfoxtwincities.com/dpp/news/investigative/Investigators_The_Power_of_One_may_27_2009

Economy leaving some seniors stuck in their homes

<http://www.spokesman.com/stories/2009/may/24/inside-looking-out/>

Fix is hard for Medicare, Social Security finances

<http://www.google.com/hostednews/ap/article/ALeqM5guhPlfoiIxCQ1FI7eKBeUvVBT5wAD98CJM0G0>

Wash. moves to cut Medicaid prescription payments

<http://www.forbes.com/feeds/ap/2009/05/22/ap6458904.html>

Man, 20, accused of robbing, beating 80-year-old

<http://www.startribune.com/local/stpaul/46478142.html?elr=KArksUUUU>

In Abuse case, lawyer questions police methods

<http://www.albertleatribune.com/news/2009/may/29/lawyer-questions-law-enforcements-means-get-statem/>

UPCOMING EVENTS AND CLE PROGRAMS

American Parkinson Disease Association Spring Conference

June 6, 8:30 a.m. – 12:30 p.m.

Radisson Hotel in Roseville, 2540 N. Cleveland Ave.

Contact information: e-mail paulette.olsen@allina.com or call 612.863.5850 or 888.302.7762

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.

The Basics of Elder Law

Video

June 16 – Minneapolis

June 18 – Moorhead

June 19 – Brainerd

June 22 – Duluth

June 22 – St. Cloud

June 26 – Mankato

July 17 – Rochester

July 20 - Minneapolis

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

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@mnelaw.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.

VULNERABLE ADULT COMMITTEE MEETING: The next meeting of the Vulnerable Adult Committee will be Thursday, July 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.

MINNESOTA CASES

There are no Minnesota Cases to report this week.

STATUTES, REGULATIONS, BULLETINS

DHS BULLETIN #09-21-07: LEGISLATIVE CHANGES TO MINNESOTA CARE FOR CERTAIN ADULTS. Effective July 1, 2009, the following two changes will be implemented for MinnesotaCare: (1) Elimination of the \$10,000 inpatient hospital limit for MinnesotaCare adults in families with children with income above 200% of the Federal Poverty Guidelines (FPG) and at or below 215% FPG; and (2) Increase in the income limit for MinnesotaCare adults without children from 200% FPG to 250% FPG. The bulletin, dated May 27, 2009, is available at:
http://www.dhs.state.mn.us/main/groups/publications/documents/pub/dhs16_145005.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.

Current and prior E-Newsletters are posted on the website for the MSBA Elder Law Section and are available at: <http://www.mnbar.org/sections/elder-law/newsletters.asp>.