

MSBA ELDER LAW SECTION E-NEWSLETTER

January 26, 2010

E-Newsletter Editorial Staff:

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LATEST ON HEALTH CARE REFORM BILL:

Check out the latest links below for the most up to date information about the bill.

Bill Language

House Version: H.R.3962 - Affordable Health Care for America Act

<http://www.opencongress.org/bill/111-h3962/show>

Senate Version: [H.R.3590](#) - Patient Protection and Affordable Care Act (Legislative Vehicle)

<http://www.opencongress.org/bill/111-h3590/text?version=ocas>

Clearinghouses of Information

Kaiser Daily Health Care Policy Report, subscribe to the Report at:

<http://www.kaiserhealthnews.org/>

The Hill e-Newsletter, a Congressional newspaper. Sign up for *The Hill News Alerts* at the top left corner of the home page at: <http://thehill.com/>.

News

Health Care Reform

<http://www.healthreform.gov/>

Health Care Reform: Full Coverage

http://www.cbsnews.com/2718-250_162-209.html

Health Care News

<http://www.foxnews.com/topics/politics/healthcare/health-care.htm>

Open Letter to Scott Brown on Health Care Reform: Revise an Original and Simple Proposal

http://www.huffingtonpost.com/dr-paul-toffel/open-letter-to-scott-brown_b_434847.html

LINK OF THE WEEK

ACTEC Commentaries on the Model Rules of Professional Conduct

The ACTEC Commentaries, prepared by the American College of Trust and Estate Counsel, are an excellent source of guidance on the thorny ethical issues that regularly confront elder law attorneys. Neither the Model Rules of Professional Conduct (MRPC) nor the Comments to them provide sufficiently explicit guidance regarding the professional responsibilities of lawyers engaged in a trusts and estates or elder law practice. Recognizing the need to fill this gap, ACTEC developed the Commentaries on selected rules to provide some particularized guidance to ACTEC Fellows and others regarding their professional responsibilities. The Commentaries may also assist courts, ethics committees and others concerned with issues regarding the professional responsibility of trusts and estates lawyers. Although the Commentaries refer specifically to the MRPC, their content is also usually applicable to the Code of Professional Responsibility, which remains in effect in some states and, like the MRPC, does not provide sufficient guidance to trusts and estates lawyers. The Commentaries generally seek to identify various ways in which common problems can be dealt with, without expressly mandating or prohibiting particular conduct by trusts and estates lawyers. While the Commentaries are intended to provide general guidance, ACTEC recognizes and respects the wide variation in the rules, decisions, and ethics opinions adopted by the several jurisdictions with respect to many of these subjects.

Access the Commentaries from the Useful Links are of the Elder Law Section Website:
<http://www.mnbar.org/sections/elder-law/practiceLinks.asp>

Check it out NOW so you can see the great sources on our web site.

ELDER LAW NEWS

Minnesota confronts fatal falls in nursing homes

<http://www.startribune.com/lifestyle/health/82323382.html?elr=KArksLckD8EQDUUUUX>

Vitamin D reduces falls in nursing homes, review says

<http://www.mcknights.com/vitamin-d-reduces-falls-in-nursing-homes-review-says/article/162037/>

UnitedHealth Profit Rises 30% as Medicare Increases

<http://www.bloomberg.com/apps/news?pid=20601103&sid=aRzr2PzRiFXE>

National Private Duty Association forms Minnesota chapter

<http://twincities.bizjournals.com/twincities/stories/2010/01/18/daily42.html>

We must not lose sight of the need to improve our national health information system

http://www.minnpost.com/community_voices/2010/01/21/15164/we_must_not_lose_sight_of_the_need_to_improve_our_national_health_information_system

Dr. Oz's Five Warning Signs for Alzheimer's -- How to Spot the Disease and What you Can Do to Help Prevent It

<http://abcnews.go.com/GMA/HealthyLiving/dr-ozs-warning-signs-alzheimers-disease/story?id=9618672>

Antipsychotics, Nursing Homes and the Feds' Case Against J&J

<http://blogs.wsj.com/health/2010/01/15/antipsychotics-nursing-homes-and-the-feds-case-against-ji/>

In Haiti, nursing home residents ask 'maybe they really do just want us to starve to death'

<http://www.startribune.com/world/82229927.html?elr=KArksUUUoDEy3LGDIO7aiU>

Minnesota police credit a 15-year-old dog with saving the life of an elderly, unconscious man

<http://www.startribune.com/nation/81346657.html?elr=KArksUUUoDEy3LGDIO7aiU>

Like a College Visit, Minus Kegs

<http://www.nytimes.com/2010/01/14/garden/14nursing.html>

FINANCIAL CORNER: Sandwich Generation can avoid squeeze

http://www2.scnw.com/scp/news/opinion/article/financial_corner_sandwich_generation_can_a_void_squeeze/98561/

MINNESOTA CASES

The following is an unpublished decision released by the Minnesota Court of Appeals released on January 19, 2010:

A09-386

Dale Kannegiesser, Appellant, vs. Darlene Morton-Gratz, Individually and as Personal Representative for the Estate of Emma Kannegiesser, Respondent.

STAUBER, Judge

On appeal in this real-estate-conveyance dispute, appellant challenges the dismissal of his suit under rule 41.02. Appellant argues that the district court erred by concluding that (1) he failed to prove the existence of an oral contract with his parents by clear, positive, and convincing evidence and (2) the imposition of a constructive trust was not justified because appellant failed to prove that the estate would be unjustly enriched as a result of appellant's work on the family farm. We affirm.

The decision is available at: <http://www.lawlibrary.state.mn.us/archive/ctapun/1001/opa090386-0119.pdf>

The following is a Minnesota Supreme Court's Grant of a Motion for Expedited Consideration issued on January 19, 2010:

On January 19, 2010, the Minnesota Supreme Court granted the Petitioners' (Governor Pawlenty, State of Minnesota, et al.) motion for expedited consideration of their petition for accelerated review for the Ramsey County District Court's order in the unallotment case. The Minnesota Supreme will hear oral arguments on March 15, 2010.

Information is available at the following links:

Star Tribune Article:

<http://www.startribune.com/politics/state/82095812.html?elr=KArks:DCiUUUU>

Minnesota Supreme Court Order:

<http://macsnc.courts.state.mn.us/pubdocs/SC/Storage/ORA100064-0119.pdf>

Ramsey County District Court case webpage:

<http://www.mncourts.gov/district/2/?page=3775>

Unpublished opinions may not be cited except as provided by Minn. Stat. Section 480A.08, Subd. 3 (2009).

STATUTES, REGULATIONS, BULLETINS

STATE REGISTER, Volume 34, Number 28 released Monday 11 January 2010, Pages 977-1008. Updates to Rules relevant to Elder Law include the following:

- Aging and Adult Services Division, Community Service/Community Services Development (CS/SD)Grants:
 - Request for Proposals to Expand Home and Community-Based Services for Older Adults..... Page 997

- Human Services Department (DHS) Nursing Facility Rate and Policy Division:
 - Request for Proposals to Conduct Consumer Satisfaction and Quality of Life Survey in Minnesota Nursing Homes; Conduct Satisfaction Survey of Family Members of Residents in Minnesota Nursing Homes; Conduct Participant Experience Survey for Individuals Receiving Home and Community Based Services, Disability Waiver and Home Care Services.... Page 1003

The register is available at:

http://www.comm.media.state.mn.us/bookstore/stateregister/34_29.pdf.

UPCOMING EVENTS AND CLE PROGRAMS

Probate & Estate: State-of-the Art Special Needs Trusts

Minnesota CLE Webcast

January 27, 12:00 – 2:00 p.m.

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

Elder Law 2010: Issues and Answers

HCBA Live Seminar

January 28, 2010

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

Estate Planning in Uncertain Times (including Medical Assistance)

Video Replay

February 12, 2010 - Duluth

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

Advanced Issues in Guardianships and Conservatorships

Minnesota CLE Live Seminar

February 24

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

Medical Assistance: “What’s Going On?”

Minnesota CLE Live Seminar

March 1

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

ELDER LAW SECTION ACTIVITIES

VULNERABLE ADULT COMMITTEE MEETING: The next meeting of the Vulnerable Adult Committee will be Thursday, January 28, 2010 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.

MA COMMITTEE MEETING: The next MA Committee meeting will be at 3:30 p.m. on Tuesday, February 16, 2010, 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, 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.

GOVERNING COUNCIL MEETING: The next meeting of the Elder Law Section Governing Council will be at 3:30 p.m. on Friday, February 19, 2010, at the MAO offices, 2021 E. Hennepin, Suite 200, Minneapolis. All members are welcome to attend. To participate by phone, please contact Vicki McIntyre at vmcintyre2@yahoo.com or 612-722-8572.

GREATER MINNESOTA COMMITTEE: Please contact Bonita Kallestad at 1-320-235-9600 or bkallestad@westernlegal.org with issues you would like the Greater Minnesota Committee to address. Also contact Bonita if you would like to serve on the Greater Minnesota Committee.

DON'T FORGET THAT THE ELDER LAW WEBSITE IS A GREAT RESOURCE.

Here's what you can find on the Website: Links to the DHS Health Care Programs Manual, the DHS Bulletin on treatment of uncompensated transfers, the Minnesota Bankers Association Compliance Bulletin on Powers of Attorney, legislative summary; Practice Links to organizations such as NAELA, ABA Commission on Law and Aging, 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 Elyse Farnsworth at efarnsworth@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://www2.mnbar.org/sections/elder-law/newsletters.asp>.