

MSBA ELDER LAW SECTION E-NEWSLETTER

February 9, 2010

E-Newsletter Editorial Staff:

Communications Committee Chair: Laurie Hanson, Esq.

Editor in Chief: Suzy Scheller, Esq.

Assistant Editor in Chief: Marjorie Austin, Esq.

Contributors: Joel Smith, Esq., Kristine Mullmann, Esq., Peter Hendricks, Esq., Amanda Christman, Esq., Andrea M. Palumbo, Esq., Vicki McIntyre, Esq., Julian Zweber, Esq.

WHAT'S NEW IN THE ELDER LAW SECTION?

NATIONAL HEALTHCARE DECISIONS DAY

Preparations are underway for the 2010 National Healthcare Decisions Day (NHDD) initiative, for which our Elder Law Section continues to serve as Minnesota State Liaison, spearheaded by the section's Pro Bono Committee. The goal of NHDD is to ensure that all adults with decision-making capacity have the information and opportunity to communicate and document their healthcare decisions. This initiative is particularly important for our senior clients.

Now is the time to volunteer your efforts!

NHDD VOLUNTEERS NEEDED

- Sponsor an NHDD event on or around April 16, 2010
- Volunteer to help out with an existing Minnesota event

To be a part of this important event, please contact Minnesota NHDD Planning Group chair, Kristine Mullmann at kmullmann@estatecrafters.com.

Although the number of event sponsors nearly tripled in 2009, more events are needed, particularly in areas outside of the Twin Cities. More events means more people who may be served. As many event sponsors need volunteer attorneys to assist on the day of the event - either through delivering the state's PowerPoint presentation or through answering questions or assisting with completion of health care directives - the planning group will keep a list of available volunteers and match the volunteers up with event sponsors as needs become known. The time commitment is generally not more than two hours. If you would like to be on the volunteer list, please let Kristine know at the address above.

One of the largest events for Minnesota NHDD takes place at William Mitchell College of Law, where approximately 16 volunteers will be needed to assist attendees in completing health care directives. The Mitchell event will be held on April 16, 2010, with volunteers committing to one or more two-hour time slots. For this event only, if you would like to volunteer, please contact me directly at vmcintyre2@yahoo.com.

PERSONAL STORIES NEEDED

The Minnesota NHDD group is gathering brief stories detailing personal experiences where a health care directive (or lack of a directive) played an important role. These stories can better communicate the importance of executing a health care directive. Three examples of these personal stories are available on the Minnesota NHDD Web site at: http://www.mnhealthcaredecisions.info/NHDD_personal_stories.html. If you have a personal experience that you would like to share, or if you have a client who would be willing to be included in this effort, please contact me at vmcintyre2@yahoo.com.

NEW MINNESOTA NHDD WEB SITE ANNOUNCED

A new Web site for the Minnesota NHDD effort is now up and running. Information is available on the site for potential and existing event sponsors and for the public, including a listing of events where interested people may get more information about and/or execute a health care directive during the NHDD initiative. Please check out the new site at: www.mnhealthcaredecisions.info.

Thank you to everyone who is volunteering time and energy to this important effort. If you have any questions, please let me know.

Vicki McIntyre
Chair, MSBA Elder Law Section Governing Council
vmcintyre@mcintyrelegal.com

BARG UPDATE: HENNEPIN COUNTY LOSES BARG-TYPE CLAIM UNDER ALTERNATIVE THEORY OF RECOVERY

Submitted by Julian J. Zweber

On February 3, 2010, the Hennepin County Probate Court issued its Order denying Hennepin County Human Service Department's medical assistance claim against the Estate of Richard L. Perrin, Court File No. 27-PA-PR-06-1482. The County argued that the Barg case, *In re Estate of Barg*, 752 N.W.2d 52 (Minn. 2008), cert. den. 129 S.Ct 2859, WL 1835179 (June 29,2009), did not settle spousal liability for medical assistance estate recovery claims under Minn. Stat. 519.05, the general spousal debt liability statute. The Court's Order noted that application of Minn. Stat. 519.05(a), as an alternative theory of recovery, had been briefed and argued in the Barg case, and even though the Barg decision was silent on the issue, the claim in Barg had been denied under both Minn. Stat. 256B.15 and Minn. Stat. 519.05(a). Under the principles of *res judicata* which require that a final court decision be binding on the parties to the case and on the parties who are in privity to the parties in the case, the Probate Court found that the medical assistance program in Minnesota is administered by the counties under the supervision of the Commissioner of

Human Services, who is designated by statute to be the single State Agency responsible for proper administration of the medical assistance program in Minnesota. Under the Minnesota statutory framework, the counties are therefore in privity with the Commissioner for purposes of administration of the medical assistance program and the Commissioner is in privity with the counties, and the counties are in privity to each other. The Probate Court concluded, therefore, that the Hennepin County claim was barred by Barg under both Minn. Stat. 256B.15 and Minn. Stat. 519.05(a), even though Hennepin County was not a party to Barg. The Personal Representative of the Estate is attorney David E. Culbert of Bloomington, Minnesota, telephone 952-546-5440.

Please see the text of the Perrin order as an addendum to the "Section Newsletter" for 2-9-2010 on the Elder Law Section webpage, available at: <http://www.mnbar.org/sections/elder-law/newsletters.asp>.

LATEST ON HEALTH CARE REFORM BILL:

Check out the latest links below for the most up-to-date information about the Health Care Reform 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/>

Health Care Reform: U.S. Department of Health & Human Services
<http://www.healthreform.gov/>

Latest Health Care Reform News Reports

Obama: We Can't Back Off Healthcare Reform
<http://www.cbsnews.com/blogs/2010/02/07/politics/politicalhotsheet/entry6183917.shtml?tag=mncol;lst;1>

MoveOn.org calls for Healthcare Reform

<http://www.youtube.com/watch?v=ojwWV3gErSQ>

LINK OF THE WEEK

The “Elder Law Prof Blog” is a national resource for items of interest to the academic world of Elder Law, which often provide insight for practicing attorneys. Daily blogs range from upcoming legislation; estate planning research trends; policy updates; recent cases; and health care topics. The Blog is sponsored by the Center for Elder Justice and Policy at William Mitchell College of Law.

Check out the Elder Law Prof Blog linked to the MSBA Elder Law Section website at:
<http://www.mnbar.org/sections/elder-law/practiceLinks.asp>.

ELDER LAW NEWS

The Top 10 Elder Law Court Rulings of 2009

<http://www.elderlawanswers.com/Resources/ArticleAtty.asp?ID=8054>

Warning signs to look for when visiting senior homes

http://seattletimes.nwsourc.com/html/localnews/2010975651_seniorsqa04m.html

Blaming Seniors for the High Cost of Health Care

<http://blogs.alternet.org/speakeasy/2010/02/02/blaming-seniors-for-the-high-cost-of-health-care/>

David Brooks: Seniors, arise!

http://www.twincities.com/ci_14319082?IADID=Search-www.twincities.com-www.twincities.com&nclck_check=1

'Geezer Bandit' strikes sixth San Diego County bank

http://www.twincities.com/ci_14295358?IADID=Search-www.twincities.com-www.twincities.com

Study: Higher Medicare copays led to fewer doctor visits, longer hospital stays

<http://www.startribune.com/lifestyle/health/82827362.html?elr=KArksUUUoDEy3LGDiO7aiU>

Grant is sign Eden Prairie project is moving forward

<http://www.startribune.com/local/west/83507827.html?elr=KArksUUUoDEy3LGDiO7aiU>

The Geezers' Crusade

<http://www.nytimes.com/2010/02/02/opinion/02brooks.html?scp=3&sq=aging&st=cse>

Communicating With a Patient in a Vegetative State

<http://well.blogs.nytimes.com/2010/02/04/communicating-with-a-patient-in-a-vegetative-state/>

Tips to avoid financial strain with aging parents

<http://www.ctpost.com/business/article/Tips-to-avoid-financial-strain-with-aging-parents-351180.php>

MINNESOTA CASES

The following is a published opinion released by the Minnesota Court of Appeals on February 2, 2010.

A09-452

In the Matter of the Guardianship and Conservatorship of: Harold F. Doyle, Ward.

Aitkin County District Court, Hon. David J. TenEyck.

It is error for a district court to take judicial notice of non-record documents that the parties have not had an opportunity to challenge or address.

Affirmed in part, reversed in part, and remanded. Judge David Minge.

"Appellants also argue that the district court abused its discretion in disallowing appellants' monthly 'base fees.' Appellants billed Doyle's estate \$250 per month for 21 months for what appellants described as 'de minimis charges.' At appellants' charged rate of \$50 per hour, these 'base fees' represent five hours per month of work for tasks that appellants characterize as too small to itemize. The district court noted that several months' billing statements listed only the \$250 fee for that month with no indication that appellants had any contact with Doyle or performed any work on Doyle's behalf during that month. However, appellants' billing statements include numerous and significant charges for phone calls and other tasks that appellants simultaneously characterize as too small to itemize."

The opinion is available at:

<http://www.lawlibrary.state.mn.us/archive/ctappub/1002/opa090452-0202.pdf>.

The following are two unpublished opinions released by the Minnesota Court of Appeals on February 2, 2010.

A09-448

In the Matter of the Guardianship and Conservatorship of: William D. Hohenauer, Ward.

Appellant guardians and conservators of ward William D. Hohenauer challenge the district court's order disallowing their accounts and certain fees and expenses paid to them out of the ward's estate. We affirm in part, reverse in part, and remand.

The opinion is available at: <http://www.lawlibrary.state.mn.us/archive/ctapun/1002/opa090448-0202.pdf>.

A09-451

In the Matter of the Guardianship and Conservatorship of: Joseph James Langa, Ward.

Appellant guardians and conservators of ward Joseph James Langa challenge the district court's order disallowing their accounts and certain fees and expenses paid to them out of the ward's estate. We affirm in part, reverse in part, and remand.

The opinion is available at: <http://www.lawlibrary.state.mn.us/archive/ctapun/1002/opa090451-0202.pdf>.

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

The following is an opinion released by the U.S. Court of Appeals for the 8th Circuit on January 27, 2010.

No. 08-2741

Country Life Insurance Company v. John F. Marks

U.S. District Court for the Western District of Missouri - Kansas City Civil case – Insurance.

Viewed in the light most favorable to defendants, there was genuine issue of material fact as to whether the financial support they provided the deceased over the course of the last nine years of her life was sufficient under Missouri law to establish an insurable interest based on a pecuniary interest, and the district court erred in granting the insurer's motion for summary judgment.

The opinion is available at: <http://www.ca8.uscourts.gov/opndir/10/01/082741P.pdf>

STATUTES, REGULATIONS, BULLETINS

Fact sheets updated during December, January

The following are new “Fact Sheets” about DHS programs, initiatives, and systems that were added or updated during December and January 2009:

- § [Alternative Care Program](#)
- § [Elderly Waiver Program](#)
- § [Licensing human services providers protects health, safety rights](#)
- § [Minnesota Health Care Programs](#)
- § [The Minnesota Family Planning Program](#)
- § [Personal care assistance program](#)

UPCOMING EVENTS AND CLE PROGRAMS

Estate Planning for the Elderly

HCBA Tele-CLE

February 9 & 10, 2010

Contact Information: http://www.hcba_registrar@hcba.org or 612-752-6600.

Estate Planning in Uncertain Times (including Medical Assistance)

Minnesota CLE 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

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.

VULNERABLE ADULT COMMITTEE MEETING: The next meeting of the Vulnerable Adult Committee will be Thursday, April 29, 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.

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 and Marjorie Austin at mj@mjaustinlaw.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>.