

MSBA ELDER LAW SECTION E-NEWSLETTER

February 23, 2010

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WHAT'S NEW IN THE ELDER LAW SECTION?

NOMINATIONS

Nominations are now being taken for Elder Law Section Governing Council and officer positions for the 2010-11 year. The term of office is two years for Governing Council members and one year for officers, effective upon election at the June 8, 2010, Annual Meeting.

Anyone interested in being considered for nomination to the slate of Governing Council members and officers may contact Nominations Committee Chair, Dan Steinhagen, at dsteinhagen@steinhagen-crist.com. Nominations close on April 1, 2010.

NATIONAL HEALTHCARE DECISIONS DAY (NHDD) - APRIL 16, 2010

Volunteers are needed to assist with NHDD events to be held in the Metro area and throughout the state on or about April 16, 2010. Volunteer activities include presenting a program about health care directives using a provided PowerPoint and/or assisting attendees with completion of health care directives. The time commitment for most events is only one or two hours. As NHDD continues to grow in Minnesota, more volunteers are needed to make the events a success.

To add your name to the volunteer list, please contact NHDD Planning Group Chair, Kristine Mullmann, at kmullmann@estatecrafters.com.

More information about NHDD-Minnesota is available on the state website at: www.mnhealthcaredecisions.info. Please volunteer!

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

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 offers new health-care plan; GOP slams it as 'government takeover'
http://www.washingtonpost.com/wp-dyn/content/article/2010/02/22/AR2010022201731.html?wpisrc=nl_pmpolitics

HHA Secretary decries higher rates for health insurance
<http://www.washingtonpost.com/wp-dyn/content/article/2010/02/18/AR2010021801345.html?hpid=topnews>

President Obama Health Care Proposal Details
<http://whitehouse.blogs.foxnews.com/2010/02/22/president-obama-health-care-proposal-details/>

Obama to unveil healthcare proposal Monday, days before bipartisan summit on the issue
http://www.startribune.com/business/84909167.html?elr=KArksLckD8EQDUoaEyqyP4O:DW3ckUiD3aPc:_Yyc:aUUT

HAITI RELIEF

The Elder Law Section Governing Council discussed the possibility of forwarding a contribution, on behalf of the Elder Law Section, to Haiti Relief and determined that it would be more appropriate for individual members of the Section to consider such a

contribution. Therefore, the Council encourages Section Members to make a contribution to the Haiti Relief organization of their choice.

LINK OF THE WEEK

MINNESOTA MEDICAID STATE PLAN: Because the Minnesota Department of Human Services does not currently provide an electronic version of Minnesota's Medicaid State Plan, the Elder Law Section is working to secure a hard copy of the Plan for posting to the section's Web site.

In the interim, copies of any portion of the State Plan may be obtained by contacting Sarina Turner of DHS:

Sarina L. Turner, Esq.
Privacy Official
Department of Human Services
P.O. Box 64998
St. Paul, MN 55164-0998

Sarina.L.Turner@state.mn.us
Phone: 651-431-4930
Fax: 651-431-7625

To review the Table of Contents of the State Plan, click
<http://www2.mnbar.org/sections/elder-law/stateplan.html>

ELDER LAW NEWS

Class focuses on farm transition and estate planning
<http://www.hutchinsonleader.com/class-focuses-farm-transition-and-estate-planning-102>

Elderly advised to buy LTC insurance (New Jersey)
<http://www.nj.com/columns/times/index.ssf?/base/columns-0/126613360395230.xml&coll=5>

Financial Elder Abuse Rampant In Economic Downturn
<http://www.forbes.com/2010/02/19/financial-elder-abuse-personal-finance-brokers-zamansky.html?boxes=financechannelforbes>

Don't leave your property tax refund unclaimed
http://www.reviewmessenger.com/index.php?option=com_content&view=article&id=4440:dont-leave-your-property-tax-refund-unclaimed&catid=36:government

Gov's budget makes big cuts in health, welfare programs
<http://minnesota.publicradio.org/display/web/2010/02/15/budget-health/>

Study: High co-pays keep more elderly patients from clinic
<http://minnesota.publicradio.org/display/web/2010/02/11/hallberg/>

Minn. AG sues 6 debt settlement companies
<http://www.startribune.com/local/84708837.html?elr=KArksUUUoDEy3LGDio7aiU>

Aging: Hospital Type May Play Role in Decision on Feeding Tubes
<http://www.nytimes.com/2010/02/16/health/16aging.html?scp=1&sq=aging&st=cse>

States Consider Medicaid Cuts as Use Grows
<http://www.nytimes.com/2010/02/19/us/politics/19medicaid.html?ref=health>

Exercise Helps Protect Brain of Multiple Sclerosis Patients, Study Suggests
http://www.sciencedaily.com/releases/2010/02/100218141813.htm?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+sciencedaily+%28ScienceDaily%3A+Latest+Science+News%29

MINNESOTA CASES

Following are excerpts from three Federal cases which may be of interest to the Elder Law Section. Links to these cases may be accessed through the PACER federal system.

Minn. Pharmacists Assoc. et al. v. Pawlenty

Civil No. 09-2723(DWF/RLE) (D. Minn. 2/10/2010)
DONOVAN W. FRANK, United States District Judge

Court's introduction:

"This matter is before the Court on Plaintiffs' motion for a preliminary injunction (Doc. No. 13) and on Defendants' motion for judgment on the pleadings (Doc. No. 17). For the reasons stated below, this Court grants in part and denies in part the motion for judgment on the pleadings and denies the preliminary injunction motion."

Court's conclusion:

"The Eleventh Amendment prohibits suit in federal court against the Minnesota Department of Human Services as well as any such suit based on state-law claims. Subsection (30)(A) creates no enforceable individual rights on which to premise an action under Section 1983. Finally, while Plaintiffs' claims based on the Supremacy Clause likely fail because the federal Secretary's approval of the State Plan is entitled to deference, Plaintiffs may proceed with limited discovery focused on the basis of that approval. The Court will entertain a motion for summary judgment following that discovery."

Excerpts:

"[A] variety of plaintiffs--chiefly pharmacies and associations representing pharmacies but also several Medicaid recipients--seek to reverse recent reductions in the reimbursement rates that the State of Minnesota pays pharmacies for brand-name ('single-source') pharmaceutical drugs covered by the State's Medicaid program. . . . The State changed its reimbursement rate from AWP ["average wholesale price"] minus 14 percent to AWP minus 15 percent, effective July 1, 2009. The Secretary of Health and Human Services approved Minnesota's plan amendment on November 18, 2009. . . .

Independent of this state legislative change . . . [a change occurred due to settlement of other litigation that] reduc[ed]'. . . published AWP figures for all drug products . . . with a mark-up higher than 1.2 down to a 1.2 mark-up.' . . .

In light of the applicable standard, Plaintiffs' particular claims can be addressed as follows: (1) whether Plaintiffs may maintain a claim under Section 1983 for violation of Subsection (30)(A) (Count I); (2) whether Plaintiffs may maintain any of their claims under the Supremacy Clause based on an alleged conflict between the State plan and federal Medicaid law (Counts II, III, IV & V); and (3) whether Plaintiffs may maintain any of their claims based on state law (Counts VI, VII & VIII) despite principles of state sovereign immunity.

Here, even accepting as true the factual allegations of Plaintiffs' Complaint, each of these issues may be resolved as a matter of law in Defendants' favor, with one exception. . . .

. . . In light of the procedural posture of this action--a pre-discovery Rule 12(c) motion for judgment on the pleadings--and the significance of the dispute, the Court concludes that the better course is to defer a final decision on Plaintiffs' Supremacy Clause claims until the parties have an opportunity to develop a fuller record regarding the basis for the Secretary's approval of the State plan."

Wittstruck v. Cloverleaf Cold Storage Co.

Civil No. 09-90(DWF/RLE) (D. Minn. 2/8/2010)

DONOVAN W. FRANK, United States District Judge

Court's introduction:

This matter is before the Court on a Motion for Summary Judgment brought by Defendant Cloverleaf Cold Storage Company ('Cloverleaf'). The remaining Count of Plaintiff's Complaint alleges that Defendant terminated Plaintiff from his employment in violation of the Age Discrimination in Employment Act (ADEA). For the reasons set forth below, Cloverleaf's motion is granted.

Leiferman v. Estate of Stoll

Civil No. 09-2976(DWF/FLN) (D. Minn. 2/12/2010)

DONOVAN W. FRANK, United States District Judge

Excerpts:

"This matter is before the Court on a Motion to Dismiss for lack of personal jurisdiction brought by Defendants the Estate of Judith Stoll and Joseph A. Girardi, as Executor of the Estate. . . . For the reasons set forth below, Defendants' motion is denied." . . .

"The Court finds that general jurisdiction exists. Ms. Stoll maintained lifelong contacts with the state, including her holdings in the Hecht estate and Valley News, her continual business and personal trips to Minnesota, and her contacts regarding her apparent plans to return to the state. Despite the fact that she moved away from Minnesota in 1996, the nature and quality of Ms. Stoll's contacts with Minnesota were, at the time of the transactions with the nephews and at the time of her death, such that she should have reasonably anticipated being haled into court here. She held stock, owned and sought to acquire property in Minnesota, contracted with residents of the state, and even solicited the making of such contracts herself. She also maintained several business relationships with residents of Minnesota, including with her former employer, Valley News, at least one real estate agent, and at least one attorney. Although each of these contacts, alone, may not demonstrate personal jurisdiction, the cumulative effect of all of the contacts together result in a prima facie showing of general jurisdiction."

STATUTES, REGULATIONS, BULLETINS

There are no Statutes, Regulations or Bulletins to report this week.

UPCOMING EVENTS AND CLE PROGRAMS

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.

Alzheimer's Association: "A Meeting of the Minds"

Dementia Conference 2010

March 20

Contact Information:

<http://www.regonline.com/builder/site/default.aspx?EventID=723531>

Elimination of Bias Training: Advising and Representing Gay, Lesbian, Bisexual and Transgender Elders

MN Legal Services Coalition

March 26

Contact Information: <http://www.projusticemn.org/link.cfm?14483>

Rural Urban Connections Video Conferences

Multiple Video Conferences with Various Topics

March 29, Northeast Minnesota
Tentative Topic: Health Care/Entrepreneurship
Contact Information:

<http://go2.wordpress.com/?id=725X1342&site=mnruralpartners.wordpress.com&url=http%3A%2F%2Fblog.rurb.mn%2Fvideoconferences%2F>

Four Programs on Aging Circle of Life Aging Services

February 25
“Biological Aspect of Aging”
Shoreview Community Center

March 2
“Psychological Aspects of Aging”
Bloomington Center of the Arts

March 22
“Sociological Aspects of Aging”
Shoreview Community Center

March 23
“Ethics and Professionalism in the Aging Field”
Bloomington Center of the Arts

Contact Information: <http://www.circleoflifemn.com/training/schedule.html>

ELDER LAW SECTION ACTIVITIES

MA COMMITTEE MEETING: The next MA Committee meeting will be at 3:30 p.m. on Tuesday, April 20, 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@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.

GOVERNING COUNCIL MEETING: The next meeting of the Elder Law Section Governing Council will be at 3:30 p.m. on Friday, April 23, 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.

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>.