

MSBA ELDER LAW SECTION E-NEWSLETTER

July 14, 2009

E-Newsletter Editorial Staff:

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ELDER LAW RESOURCES NEEDED FOR PRO BONO PRACTITIONERS

The Elder Law Section's Member Education Committee, in conjunction with the Minnesota State Bar Association and Minnesota Legal Services Coalition, will meet at **noon on Wednesday, July 22, 2009** at the MSBA offices, 600 Nicollet Mall, Suite 380, ("Honors" room) Minneapolis, MN, to discuss collection and organization of elder law resources for use by attorneys representing low-income clients. (Bring a lunch if you like.) MSBA and MLSC administer the website ProJusticeMN.org, which provides resources for pro bono and legal services practitioners representing low-income or disadvantaged clients. Access to these resources is invaluable to those assisting low-income elders.

All section members are welcome to attend and assist in this important effort, and representatives both from MSBA and MLSC will be in attendance. Specifically, we need pleadings, practice aids, legal research materials, and relevant links that relate to the following elder law topics:

Advance Directives

Elder Abuse
Government Benefits Planning
Guardianship & Conservatorship
Medicare & Medicare Part D
Power of Attorney
Probate & Probate Alternatives
Wills, Trusts & Estate Planning

If you are unable to attend on July 22nd, but have resources to contribute, please contact Brian Bell at bbell@mnbar.org or 612-278-6309, or Laura Zdychnec at lzdychnec@mnellderlaw.com or 952-929-0622.

RESEARCH ARTICLES OF INTEREST

Below are cites to various articles of interest to the Elder Law community.

Hovey, Jaime E. Note. *Nursing Wounds: Why LGBT Elders Need Protection from Discrimination and Abuse Based on Sexual Orientation and Gender Identity*, 17 Elder L.J. 95-123 (2009).

Martin, Nathalie, *Consumer Scams and the Elderly: Preserving Independence through Shifting Default Rules*. 17 Elder L.J. 1-30 (2009).

Rhein, Jennifer L., *Note: No One in Charge: Durable Powers of Attorney and the Failure to Protect Incapacitated Principals*, 17 Elder L.J. 165-199 (2009).

Schleppenbach, John R., *Strange Bedfellows: Why Older Straight Couples Should Advocate for the Passage of the Illinois Civil Union Act*, 17 Elder L.J. 31-59 (2009).

ELDER LAW NEWS

Domestic abuse among elders remains a hidden problem

http://minnesota.publicradio.org/display/web/2009/07/02/late_life_abuse/

Kathryn Roberts: The elephant in the room on health care (We can't have reform without a financing solution for long-term care)

http://www.startribune.com/opinion/commentary/50069197.html?elr=KArks7PYDiaK7DUvDE7aL_V_BD77:DiiUiD3aPc:_Yyc:aUU

Colleges bank on early retirement to balance budgets

http://minnesota.publicradio.org/display/web/2009/07/06/early_retirement/

Building No. 9 falls but will rise again (Removing a piece of Minneapolis history will give way to a new Veterans Home building in a couple of years)

http://www.startribune.com/local/50049202.html?elr=KArksLckD8EQDUoaEyqyP4O:DW3ckUiD3aPc:_Yyc:aUUI

Minnesota works to improve home-health care rankings

http://www.twincities.com/news/ci_12759748?source=rss

The Investor: Long-term care policy saves cash (Minnesota and some other states offer a plan that allows recent buyers to protect assets)

http://www.startribune.com/business/49725287.html?elr=KArks:DCiU10iP:DiiUiD3aPc:_Yyc:aUU

Families in elder abuse case are using online networks (Facebook, YouTube, Twitter, blogging spread message)

<http://www.albertleatribune.com/news/2009/jun/27/families-elder-abuse-case-are-using-online-network/>

The Minnesota Senior Games give 50-year-plus athletes a chance to act their age.

<http://www.startribune.com/sports/preps/50053362.html?elr=KArksUUUoDEy3LGDio7aiU>

[Dakota County: Help for homeowners close to foreclosure](http://www.startribune.com/local/south/49978392.html?elr=KArksUUUoDEy3LGDiO7aiU)

<http://www.startribune.com/local/south/49978392.html?elr=KArksUUUoDEy3LGDiO7aiU>

[Geriatric YouTube Stars Dish About Pop Music](http://www.npr.org/templates/story/story.php?storyId=106284658)

<http://www.npr.org/templates/story/story.php?storyId=106284658>

MINNESOTA CASES

The following are two published decisions released by the U.S. District Court for the District of Minnesota released on July 6, 2009:

Civil NO. 09-768 (DSD/SRN) (D. Minn. 7/6/2009)

Cedar-Riverside People's Center v. Minn. Dep't. of Human Svcs.

DAVID S. DOTY, Judge, United States District Court Judge

Court's introduction:

This matter came before the court on June 12, 2009, upon plaintiffs' motion for a preliminary injunction. Plaintiffs and defendants appeared through counsel. Based upon a review of the file, record and proceedings herein, plaintiffs' motion for a preliminary injunction is granted.

Excerpts:

"Plaintiffs are six federally qualified health centers ('FQHCs') that receive grants under section 330 of the Public Health Services Act ('PHSA'), 42 U.S.C. § 254b, to provide healthcare services to medically underserved populations. Defendants, the Minnesota Department of Human Services and its Commissioner, administer

and manage Minnesota's Medicaid program. . . . Plaintiffs allege that defendants have not timely made complete supplemental payments in violation of §§ 1396a(bb)(5)(A) and (bb)(5)(B), and have unlawfully 'rebased' the baseline rate in violation of §§ 1396a(bb)(1)-(5). Plaintiffs now seek a preliminary injunction requiring defendants to comply with Medicaid's reimbursement requirements."

Civil No. 09-132 (JNE/RLE) (D. Minn. 7/6/2009)

Savig v. First Nat'l Bank of Omaha

JOAN N. ERICKSEN, United States District Court Judge

Court's introduction:

This case, which arises from the post-judgment garnishment of bank accounts jointly held by Mona Savig and Robert Savig, a married couple, to satisfy Mona's debts, involves the interplay between Minn. Stat. §§ 571.31-.931 (2008) (Minnesota's garnishment statute), Minnesota's Multi-Party Accounts Act (MPAA), Minn. Stat. §§ 524.6-201 to 524.6-214 (2008), and the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §§ 1692-1692p (2006). The Savigs contend that the garnishment of their joint accounts by Messerli & Kramer, P.A. (Messerli), on behalf of First National Bank of Omaha (First National) violates the FDCPA and constitutes conversion, wrongful levy, and intrusion upon seclusion. At least five similar suits are pending in this District, including the putative class action *Bowers v. Messerli & Kramer, P.A.*, Civ. No. 09-1036 (JNE/JJK) (D. Minn. filed May 1, 2009). First National and Messerli (collectively, Defendants) seek certification of questions of law relating to the burden of proving net contributions to a joint account during a post-judgment

garnishment proceeding to the Minnesota Supreme Court and a stay pending resolution of those questions. Defendants alternatively move for judgment on the pleadings or summary judgment. For the reasons set forth below, the Court certifies a reformulation of Defendants' questions to the Minnesota Supreme Court and stays this action pending resolution of the certified question.

Excerpts:

"[W]hile the Court is of the opinion that the burden of proving net contributions to a joint account falls to the account holders, the Minnesota Supreme Court should have the opportunity to address, if it chooses to do so, the burden of proof issue and what, if any, applicable presumptions regarding ownership apply in the absence of such proof. The Court therefore exercises its discretion to certify the following question to the Minnesota Supreme Court:

May a judgment creditor serve a garnishment summons on a joint account to satisfy the debt of an account holder when not all of the account holders are judgment debtors, and if so, (1) is it the judgment creditor or the account holders who bear the burden of establishing net contributions to the account during the garnishment proceeding and (2) what applicable presumptions regarding ownership, if any, apply in the absence of proof of net contributions?

The Court acknowledges that the Minnesota Supreme Court may reformulate this question."

Both decisions are available on the Pacer system.

STATUTES, REGULATIONS, BULLETINS

DHS BULLETIN #09-25-07: COMMUNITY BUDGET CAPS ARE REDUCED FOR CERTAIN ELDERLY WAIVER (EW) AND ALTERNATIVE CARE (AC) PARTICIPANTS

EFFECTIVE JULY 1, 2009. The state-funded AC program and the medical assistance-funded EW program provide funding to purchase home and community-based services and supports to financially eligible people age 65 and over who meet nursing facility level of care and other requirements. Amendments to Minnesota Statutes, sections 256B.0913 and 256B.0915 approved by the 2009 Minnesota Legislature created new community budget or case mix caps for individuals with no or low needs in certain activities of daily living. These new budget caps must be applied to all new participants effective July 1, 2009, and to current participants at their next reassessment. The new case mix classification is referred to as “Case Mix L”. The bulletin, dated July 2, 2009, is available at:

http://www.dhs.state.mn.us/main/groups/publications/documents/pub/dhs16_145358.pdf

UPCOMING EVENTS AND CLE PROGRAMS

The Basics of Elder Law

Video

July 17 – Rochester

July 20 – Minneapolis

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

Medical Assistance & Long Term Care 2009

Video

August 17 – Minneapolis

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

Elder Law Institute

October 8-9, 2009

Minnesota CLE Conference Center

ELDER LAW SECTION ACTIVITIES

MEMBER EDUCATION COMMITTEE MEETING: The Elder Law Section's Member Education Committee, in conjunction with the Minnesota State Bar Association and Minnesota Legal Services Coalition, will meet at **noon on Wednesday, July 22, 2009** at the MSBA offices, 600 Nicollet Mall, Suite 380, ("Honors" room) Minneapolis, MN, to discuss collection and organization of elder law resources for use by attorneys representing low-income clients. (Bring a lunch if you like.) If you are unable to attend on July 22nd, but have resources to contribute, please contact Brian Bell at bbell@mnbar.org or 612-278-6309, or Laura Zdychnec at lzdychnec@mnellderlaw.com or 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.

MA COMMITTEE MEETING: The next MA Committee meeting will be at 3:30 p.m. on Tuesday, August 18, 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, 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, August 21, 2009, 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.

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://www.mnbar.org/sections/elder-law/newsletters.asp>.