

MSBA ELDER LAW SECTION E-NEWSLETTER

August 18, 2009

E-Newsletter Editorial Staff:

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LAW CLERK RESEARCH AVAILABLE TO SECTION MEMBERS BY REQUEST

Research conducted by law clerk Melissa Hunt (William Mitchell 2009) during 2007-2009 is now available to interested members of the Elder Law Section. In April 2007, the Governing Council voted to hire a law clerk to conduct research regarding the DHS Health Care Programs Manual (HCPM) for the purpose of determining whether certain changes to the Manual in December 2006 were properly promulgated and what parties would have standing to challenge the process (or lack of process) leading up to these changes, should an injunction against enforcement of a particular provision be sought with the Office of Administrative Hearings.

On the basis of her research, Melissa concluded that changes made to the HCPM constituted administrative rulemaking and were therefore subject to the requirements of Minnesota's Administrative Procedure Act, Minn. Stat. 14.001 et seq., <https://www.revisor.leg.state.mn.us/statutes/?id=14.001>. Documents that Melissa submitted to the Governing Council included memoranda discussing: (1) civil Actions and legal analysis of the process for bringing claims on behalf of Medical Assistance recipients who were denied payment because of Manual rules that conflict with federal laws - including Minnesota case law on improper rulemaking and requirements of a Section 1983 claim; (2) standing issues, including Minnesota and national case law on point; and (3) the Minnesota Data Practices Act and its requirement that DHS to keep information in easily locatable and retrievable format. Melissa also provided an Administrative Law Judge's ruling from April 2007, disapproving Minnesota DHS's proposed amendments, adoptions, and repeal of rules relating to Social Services Program Changes under the Good Cause Exemption.

Any Elder Law Section member who is interested in reviewing Melissa's research may contact Elder Law Governing Council Chair Vicki McIntyre at vmcintyre2@yahoo.com to receive a copy of the materials.

ELDER LAW NEWS

Is it legal to hide, transfer assets?

<http://www.jacksonsun.com/article/20090809/NEWS19/908090311>

Wallace: Avoid these 8 Medicaid mistakes

<http://www.thetimesherald.com/article/20090809/NEWS01/908090319/1002>

Weigh expenses, returns of long-term care insurance
<http://www.jacksonsun.com/article/20090809/NEWS19/908090309>

Living with attached neighbors
http://searchchicago.suntimes.com/homes/news/1705811,attached_neighbors-kay09.article

AgeWell Home Care takes a holistic approach to growing old
http://www.twincities.com/business/ci_13017949?nclick_check=1

Klobuchar introduces bills to protect seniors and their families
http://www.reviewmessenger.com/index.php?option=com_content&view=article&id=2291:klobuchar-introduces-bills-to-protect-seniors-and-their-families&catid=19:guest-opinion

Help for long term care?
<http://minnesota.publicradio.org/display/web/2009/08/10/midmorning1/>

Domestic abuse among elders remains a hidden problem
<http://minnesota.publicradio.org/display/web/2009/08/10/midmorning1/>

Integrity Marketing Hosts Virtual Event to Help Estate Planning & Elder Law Attorneys Use the Internet to Build Revenue
<http://www.prweb.com/releases/2009/08/prweb2740774.htm>

Obama tries to reassure seniors worried about Medicare cuts in health care overhaul
<http://www.startribune.com/politics/52971522.html?elr=KArksUUUoDEy3LGDio7aiU>

Obama says health overhaul would not set up "death panels" to rule on care for seniors
<http://www.startribune.com/politics/52971337.html?elr=KArksUUUoDEy3LGDio7aiU>

Newest Senator on Aging Committee, Franken Joins in Medicare Bill to Reform Hospital Pay
<http://seniorjournal.com/NEWS/Politics/2009/20090806-NewestSenator.htm>

MINNESOTA CASES

The following is an unpublished case from Minnesota Court of Appeals released on August 11, 2009:

A08-2176

In re the matter of: The Colene P. McDonough Living Trust Dated 2/19/97, as Amended by a First Amendment Dated 6/16/99.

KLAPHAKE, Judge

Appellant Ronald Schafer, the personal representative of the estate of Thomas White, challenges the district court's order dismissing his petition asking for a trust accounting and removal of respondent Francis P. McDonough, Jr., as trustee of the Colene P. McDonough Living Trust. Because the district court correctly concluded that appellant lacks standing to pursue an action against the trust, we affirm the dismissal of the petition. But because the district court failed to comply with the requirements of Minn. R. Civ. P. 11, we reverse the court's order for attorney fees awarded as a sanction against appellant.

The decision is available at: <http://www.lawlibrary.state.mn.us/archive/ctapun/0908/opa082176-0811.pdf>

Unpublished opinions may not be cited except as provided by Minn. Stat. § 480A.08, Subd. 3 (2008).

STATUTES, REGULATIONS, BULLETINS

DHS BULLETIN #09-25-09: 2009 Legislative Changes to the Vulnerable Adult Act. The 2009 Minnesota Legislature made revisions to the Vulnerable Adults Act (VAA), Minnesota Statutes, sections 626.557 and 626.5572. These revisions and amendments tackle the growing problem of financial exploitation of vulnerable adults, streamline the adult maltreatment reporting system to expedite responses, clarify the lead investigative agency for personal care assistants (PCA's), simplify adult protection data retention requirements, clarify the definition of who is protected, and standardizes investigations. The bulletin, dated August 7, 2009, is available at http://www.dhs.state.mn.us/main/groups/publications/documents/pub/dhs16_145978.pdf

DHS BULLETIN #09-21-10: Changes to Citizenship Documentation Requirements for Medical Assistance and MinnesotaCare for Families with Children. The federal Deficit Reduction Act of 2005 (DRA) requires applicants for federally funded Medicaid programs, who declare to be U.S. citizens or nationals, to provide, on a one-time basis, satisfactory documentation of their citizenship prior to approval of eligibility. The 2006 Minnesota Legislature mandated that the Medical Assistance (MA) and MinnesotaCare programs comply with the DRA citizenship documentation requirements. The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) amended the DRA citizenship documentation requirements. This bulletin provides information and instructions to implement the CHIPRA changes to the citizenship documentation requirements. The bulletin, dated August 4, 2009, is available at: http://www.dhs.state.mn.us/main/groups/publications/documents/pub/dhs16_145951.pdf

UPCOMING EVENTS AND CLE PROGRAMS

**Advising Trustees: Duties, Disclosures, and Liability
HCBA Tele-Seminar (Part 1 of 2)
August 25 at Noon**

Contact Information: <http://www.hcba.org> or 651.752.6600.

The Prudent Investor Rule: Understanding the Rules of Trust Investments

HCBA Tele-Seminar (Part 2 of 2)

August 26 at Noon

Contact Information: <http://www.hcba.org> or 651.752.6600.

Elder Law Institute

October 8-9, 2009

Minnesota CLE Conference Center

ELDER LAW SECTION ACTIVITIES

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.

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

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>.