

MSBA ELDER LAW SECTION E-NEWSLETTER

November 10, 2009

E-Newsletter Editorial Staff:

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HENNEPIN COUNTY ATTEMPTS RE-LITIGATION OF *BARG* ISSUES

Submitted by Julian J. Zweber, Esq.

Despite Mille Lacs County's recent loss in the Minnesota Supreme Court in the *Barg* case, and the refusal of the United States Supreme Court to grant certiorari (In re *Estate of Barg*, 752 N.W.2d 52 (Minn. 2008) cert. denied sub nom. *Vos v. Barg*, 129 Sup. Ct. 2859, 2009 WL 1835179 (June 29, 2009)).

Hennepin County, at the urging of the Minnesota Department of Human Services, is still pursuing estate recovery in a case with material facts similar to *Barg*. Many county collection units have already accepted the finality of the *Barg* decision and have dropped *Barg*-type claims. Hennepin County is arguing that the *Barg* court only decided that Minn. Stat. § 256B.15 was in conflict with federal law and that the Court did not decide whether Minn. Stat. § 519.05, the general statute which governs the liability of one spouse for the debts of the other, would provide a separate and independent basis for full recovery. The issue will be decided by the Hennepin County District Court, Probate Court Division, on cross-motions for summary judgment. *Estate of Richard L. Perrin*, Henn. Co. Dist. Ct., Prob. Div., File No. 27-PA-PR-06-1482.

The County filed its Memorandum of Law on October 9, 2009. The Estate's Memorandum was filed on November 2. The Estate's memorandum points out that both parties in the *Barg* case fully briefed and argued the potential impact of § 519.05. The Estate argues that the doctrine of res judicata prevents re-litigation of any issue which was raised or could have been raised in *Barg*. The Estate also argues under the doctrine of privity that Hennepin County and the Commissioner of Human Services and all other Minnesota counties are bound by the *Barg* decision even though they are not named parties.

The Estate is asking for sanctions against Hennepin County under Minn. R. Civ. P. 11 and Minn. Stat. §§ 549.211 & 515.472, for pursuing a claim without legal basis. The Estate is represented by Attorney David E. Culbert of Minneapolis.

MN BOARD ON AGING VACANCIES

Submitted by Laurie Hanson, Esq.

The Minnesota Board on Aging currently has six vacancies. The board develops, coordinates, evaluates, and administers federal and state funds for programs for the aging; makes grants to 14 area agencies on aging and non-profit agencies; serves as advocate for older persons. The board consists of 25 members including at least one member from each congressional district. Six meetings a year on the third Friday of those months. Committee meetings are the preceding day. Meetings are held at 540 Cedar Street, St. Paul.

As health care reform takes place, it is crucial that individuals familiar with long-term care issues facing seniors are on this Board. If you or someone you know is particularly knowledgeable about these issues, we urge you to apply for membership. The Board on Aging has been silent on policy and legislative proposals from the Department of Human Services, most likely because there was no meaningful dialogue concerning these policies with BoA staff. While housed in the Department of Human Services, the Board on Aging is supposed to be an independent Board. Only with meaningful participation by Board members can such independent dialogue be accomplished. Please let us know if you apply!

Further information about the openings and application process is available at:
<http://www2.mnbar.org/sections/elder-law/MN%20BOARD%20ON%20AGING.pdf>.

ELDER LAW NEWS

House Passes Healthcare Reform Bill

<http://www.cnn.com/2009/POLITICS/11/07/health.care/index.html>

SPECIAL REPORT: Are doctors what ails U.S. healthcare?

<http://www.reuters.com/article/domesticNews/idUSTRE5A50EB20091106?sp=true>

Long-Term Facilities Prepare for H1N1

<http://kaaltv.com/article/stories/S1236706.shtml?cat=10219>

MoneyGram scam: Always be sure you know to whom you're wiring money

http://www.star-telegram.com/consumer_news/story/1740937.html

Pioneer groundbreaking set for Tuesday

<http://www.fergusfallsjournal.com/news/2009/nov/06/pioneer-groundbreaking-set-tuesday/>

Guilty plea made in bilking of elderly mom

<http://www.startribune.com/local/stpaul/69007617.html?elr=KArksUUUoDEy3LGDio7aiU>

St. Paul police seek suspect who tied up, robbed elderly man

<http://www.startribune.com/local/stpaul/67397472.html?elr=KArksUUUoDEy3LGDio7aiU>

Plan Creates New Program to Pay for Long-Term Care

<http://online.wsj.com/article/SB125729081453226589.html>

MINNESOTA CASES

There are no Minnesota Cases to report this week.

STATUTES, REGULATIONS, BULLETINS

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

UPCOMING EVENTS AND CLE PROGRAMS

Elder Law Institute

Video Replays

November 12, 2009 – Moorhead

November 13, 2009 – Hibbing

November 13 & 16, 2009 – St. Cloud

November 20, 2009 - Park Rapids

November 17-18, 2009 – Minneapolis

December 4, 2009 – Mankato

January 21-22, 2010 – Duluth

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

Estate Planning in Uncertain Times (including Medical Assistance)

Video Replay

November 20, 2009 – Rochester

November 20, 2009 – St. Cloud

November 23, 2009 – Minneapolis

December 1, 2009 – Moorhead

December 10, 2009 – Mankato

December 11, 2009 – Crookston

December 11, 2009 – Park Rapids

February 12, 2010 - Duluth

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, December 15, 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, December 18, 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, 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.

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>.