

# MSBA ELDER LAW SECTION E-NEWSLETTER

## September 22, 2009

### **E-Newsletter Editorial Staff:**

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### **WHAT'S NEW IN THE ELDER LAW SECTION?**

#### **Vulnerable Adults Standing Committee**

The Vulnerable Adults standing committee was created as a new Elder Law Section committee during 2009. The committee's purpose is to explore issues related to vulnerable adults and to provide education to attorneys and the community which may reduce or eliminate elder abuse. The committee's 2009 goal is to develop seminars related to vulnerable adult issues and to explore opportunities to present the seminars at various community and professional meetings.

To date, the committee has identified three main topics for seminar development and has formed teams to explore the level of interest among community groups and social workers, as well as possible dates for presentation. The three topics currently under development are:

- Power of Attorney and Guardianship/Conservatorship Issues
- The Vulnerable Adults Act and Financial Exploitation
- Elder Abuse/Neglect and Nursing Homes/Facilities

Anyone interested in assisting with the efforts of the Vulnerable Adults Committee may contact co-chair Ken LaBore, at [klabore@prs.legal.com](mailto:klabore@prs.legal.com), or co-chair Joel Smith, at [joel@koslawfirm.com](mailto:joel@koslawfirm.com).

#### **Elder Care Guide**

During 2009, the Elder Law Section also provided financial support for development of the Elder Care Guide, a publication designed to assist attorneys in advising clients seeking placement in a care facility. The guide provides a comprehensive overview of the types of facilities available, the associated rules and regulations which apply to the various types of facilities, and the services provided by each. The main goal of the guide is to avoid misplacement of seniors by providing consumers and attorneys with a better understanding of which facilities would best meet a senior's health needs. The guide was developed by Ken LaBore and Suzy Scheller of Pearson, Randall, Schumacher & LaBore and *will be provided free of charge to attendees of the October 8-9, 2009, Elder Law Institute.*

#### **Elder Law Institute Presentation**

Ken and Suzy will kick off this year's Elder Law Institute on October 8th with a presentation drawing on some of the information available in the new Elder Care Guide. The presentation is designed to help attorneys navigate the complexities of entering a long-term care facility and to deal with issues which may arise while in residence - including possible abuse or maltreatment.

If you have not yet registered for the Elder Law Institute, there is still time! Registration is available through the brochure previously sent out to members, online at [www.minncle.org/SeminarDetail.aspx?ID=104211001](http://www.minncle.org/SeminarDetail.aspx?ID=104211001), or by calling Minnesota CLE at 651-227-8266 or 800-759-8840. Don't wait until the last minute, *as the first 300 registrants will also receive a free copy of Jane Brody's new book, Jane Brody's Guide to the Great Beyond.*

Have a great week!

Vicki McIntyre  
Chair, Elder Law Section Governing Council  
[vmcintyre@mcintyrelegal.com](mailto:vmcintyre@mcintyrelegal.com)

### **LOOKING FOR PRO BONO/VOLUNTEER OPPORTUNITIES?**

A recent survey of Elder Law Section Members indicated that many of you are interested in pro bono work, but don't know where to look. You ask – We respond. The MSBA Pro Bono Directory assists in identifying organizations in need of volunteers. You can search for organizations based on your own needs and interests by specifying location and areas of law – including Elder Law - and populations served. Volunteers using the Directory are provided with contact information for volunteer coordinators with the organization(s) that match their interests. The Directory, available at [www.projusticemn.org/oppsguide](http://www.projusticemn.org/oppsguide), was recently updated to ensure that the information provided to volunteers correctly reflects the needs of organizations. Go forth and Volunteer!!!

### **PLEASE CONTRIBUTE RESOURCES FOR PRO BONO EFFORTS!**

The Elder Law Section's Member Education Committee, together with the Minnesota State Bar Association and Minnesota Legal Services Coalition, is soliciting elder law resources for [ProJusticeMN.org](http://ProJusticeMN.org). The purpose of this collaborative effort is to establish a fully-functioning Elder Law "library" for use by those representing low-income seniors. Please consider contributing Pleadings, Letters, Forms, Practice Aids, and Links in the following categories:

- Advance Directives
- Elder Abuse
- Guardianship/Conservatorship
- Government Benefits Planning
- Administrative (M.A.) Appeals
- Medicare & Medicare Part D
- Powers of Attorney
- Probate & Probate Alternatives
- Wills, Trusts & Estate Planning
- Grandparent Custody
- Veterans Benefits
- Elder Care/Long-term care Rights

Your contributions will be made available only to attorneys working with legal aid or other pro bono efforts. So please give generously! Send your contributions to:  
[lzdychnec@mnelderlaw.com](mailto:lzdychnec@mnelderlaw.com) or [jmfreeman@mnlegalservices.org](mailto:jmfreeman@mnlegalservices.org).

## **NEWS FROM THE CENTER FOR ELDER JUSTICE AND POLICY**

The Center has recently published a brochure entitled “Law Office Accommodations—Accessibility for All.” The brochure discusses the legal and practical considerations that lawyers representing elders and others who may have physical limitations should consider when designing law office space. The brochure is available for free download at <http://www.cejp.org/resources/lawoffice.pdf>.

## **ELDER LAW NEWS**

**Aide fired after abusing patients in outstate nursing home**

<http://minnesota.publicradio.org/display/web/2009/09/18/nursing-home-abuse/>

**Hoping to see the grandkids, grandparents battle courts**

<http://www.startribune.com/local/59286807.html?elr=KArksLckD8EQDUoaEyqyP4O:DW3ckUiD3aPc: Yyc:aUgOy9cP3DieyckcUsI>

**Cutting edge technology helping prevent falls at nursing homes**

[http://www.king5.com/health/stories/NW\\_091109HEK-nursing-home-prevention-LJ.16e128f0b.html](http://www.king5.com/health/stories/NW_091109HEK-nursing-home-prevention-LJ.16e128f0b.html)

**Nurses, relatives underestimate pain in nursing home residents, study finds**

<http://www.mcknights.com/Nurses-relatives-underestimate-pain-in-nursing-home-residents-study-finds/article/149176/>

**Cutting Medicare to nursing homes is poor healthcare policy**

<http://www.mcknights.com/Cutting-Medicare-to-nursing-homes-is-poor-healthcare-policy/article/148978/>

**An oddity for illness, but welcome news for seniors: Swine flu largely targets young**

<http://www.startribune.com/lifestyle/health/59649022.html?elr=KArksUUUoDEy3LGDiO7aiU>

**Is Medicare a Model to Be Followed or Avoided?**

<http://online.wsj.com/article/SB10001424052970204518504574417162426124566.html>

**Making the Switch to Healthier Foods Dr. Jennifer Ashton Gives a Nutrition Formula for a Better Overall Diet Using Tasty Alternatives**

<http://www.cbsnews.com/stories/2009/09/18/earlyshow/health/main5320092.shtml?tag=cbsnewsLeadStoriesAreaMain;cbsnewsLeadStoriesPrimary>

## MINNESOTA CASES

*The following is an unpublished opinion released by the Minnesota Court of Appeals on September 15, 2009.*

### **A08-1581**

*Estate of Thomas J. McCarthy*

MINGE, Judge

This appeal arises out of the claim by appellant, a 48-year-old disabled individual, against the estate of his father for child support, medical expenses and insurance coverage that the father was or potentially could be obligated to pay to appellant son. Appellant challenges the district court's order limiting his claim against the estate to \$47,700. Because we conclude that the district court erred in failing to consider past medical expenses when calculating child-support arrearages, we reverse in part and remand.

The decision is available at: <http://www.lawlibrary.state.mn.us/archive/ctapun/0909/opa081581-0915.pdf>.

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

## STATUTES, REGULATIONS, BULLETINS

**DHS BULLETIN #09-21-12: DHS ANNOUNCES STREAMLINED PROCEDURES FOR MEDICAL ASSISTANCE (MA) MONTHLY MEDICAL SPENDDOWNS AND INFORMATION ON REPORTING MEDICAL EXPENSES.** Currently there are two different processes used for monthly spenddowns: automated and manual. The Department of Human Services (DHS) has developed streamlined procedures for clients who have been using the manual monthly spenddown and monthly reporting. Beginning in October 2009, MA clients with varying income who have a monthly medical spenddown will no longer receive a Household Report Form (HRF) (DHS-2120) and will be opened in MMIS for the remainder of the current certification period. This means providers will be able to identify these clients as eligible for MA with a spenddown in the EVS at the time the service is provided and the client cannot be charged more than the spenddown amount. In addition, DHS has updated the Medical Expenses Request (DHS-1844) and developed a new form, Medical Assistance (MA) for Enrollees who have a Spenddown (DHS-5792C), to assist all clients who are eligible with a spenddown in reporting incurred medical expenses.

The bulletin, dated September 17, 2009, is available at:  
[http://www.dhs.state.mn.us/main/groups/publications/documents/pub/dhs16\\_146240.pdf](http://www.dhs.state.mn.us/main/groups/publications/documents/pub/dhs16_146240.pdf)

## UPCOMING EVENTS AND CLE PROGRAMS

**Elder Law Institute**

**Minnesota CLE Conference**

October 8-9, 2009

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

**Estate Planning in Uncertain Times (including Medical Assistance)**

**Minnesota CLE Live Presentation**

October 19, 2009

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

**ELDER LAW SECTION ACTIVITIES**

**GOVERNING COUNCIL MEETING:** The next meeting of the Elder Law Section Governing Council will be at 12:30 p.m. on Friday, October 9, 2009, at the conclusion of the Elder Law Institute, at the Minnesota CLE Conference Center, 3rd floor City Center, Minneapolis. All members are welcome to attend. To participate by phone, please contact Vicki McIntyre at [vmcintyre2@yahoo.com](mailto:vmcintyre2@yahoo.com) or 612-722-8572.

**MA COMMITTEE MEETING:** The next MA Committee meeting will be at 3:30 p.m. on Tuesday, October 20, 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](mailto: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.

**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. 5<sup>th</sup> Street, Suite 1025, Minneapolis, 612.767.7500. Contact co-chairs Ken LaBore at [klabore@prslegal.com](mailto:klabore@prslegal.com) or Joel Smith at [joel@koslaw.com](mailto:joel@koslaw.com) for more information.

**GREATER MINNESOTA COMMITTEE:** Please contact Bonita Kallestad at 1-320-235-9600 or [bkallestad@westernlegal.org](mailto: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.

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**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>

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Please send E-Newsletter contributions by noon on Saturday of each week to Suzy Scheller at [sscheller@prslegal.com](mailto: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](mailto: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>.