

MSBA ELDER LAW SECTION E-NEWSLETTER
June 21, 2011

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E-Newsletter Editorial Staff:

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THOUGHTS FROM THE INCOMING CHAIR - JUNE 17, 2011

Thank You 2010-2011 Officers

At the June 17, 2011 Annual Meeting for the Elder Law Section, the Section said thank you and farewell to two of its officers. Jennifer Wright served as Chair for the past year and continued a tradition of strong leadership in the Section. On behalf of the Section, I thank her for her commitment and support to the Section over the last several years, having served in many capacities. I also thank Janet Totter for her service as Treasurer and wish her success as she transitions to new job opportunities. Thanks also to Laura Zydchneec who faithfully performed her duties as Secretary. We are glad to have her expertise as Vice Chair for the coming year.

Thoughts from the Incoming Chair, Suzy Scheller

Thank you for the opportunity to serve the Elder Law Section as the incoming Chair. The Section has a rich tradition of strong leadership and committed members. I am proud to be a part of the organization and look forward to serving with our Executive Committee. As a math major, one of my first tasks was to look at the demographics of our Section in order to best understand how to serve the members. In 2010, the Elder Law Section was made up of 494 members. The Section is “maturing”, with approximately 48% of the members age 50 or more and only 14% of the members practicing five years or less. A majority of members are in a law firm setting (64.2%) with 1-5 attorneys (74%). The number of members outside the seven county metro area is relatively significant (30%). See the Elder Law Section website at <http://www.mnbar.org/sections/elder-law/2010-11%20Section%20Profile%20Report.pdf>.

Several issues facing the Section will be important to navigate in the coming year, including potential changes in how Medicaid is funded (SF1031 at <http://www.gpo.gov/fdsys/pkg/BILLS-112s1031is/pdf/BILLS-112s1031is.pdf>), transitions to implementing federal health care reform legislation, continued rule-making, changes in provider accountability legislation (Accountability Care Organization-ACO),

estate recovery (*Perrin* appeal A10-1352), and – stay tuned for others. A potential state government shutdown may be the most imminent issue. Simply continuing our efforts on these issues would be a great accomplishment in furthering our practice area. However, my nature is to strive for more, and I challenge us as a Section to do the same. With challenges come opportunities.

Opportunity for Greater Coordination of Elder Law with Other Practice Areas

The lines continue to blur between Elder Law and other practice areas. We may not have a “traditional” Elder Law practice anymore, if we ever did. My solo practice is “primarily” litigation and may be viewed as a “non-traditional” area of Elder Law. I use the word “primarily” loosely because many other issues are involved in representing elderly and disabled clients in injury and death claims, such as admission and discharge disputes, care concerns, decision-making authority, maltreatment including financial exploitation, licensing, visitation, Medical Assistance and Medicare payments, family law issues, estate planning, and tax implications. Many of our members experience this cross-section of issues. The complexity of evolving client scenarios is an opportunity for greater coordination with other practice areas:

- Coordinate a list of resources (i.e. government benefits and services, non-profit and for-profit organizations, and professionals) in all corners of the state to share with our fellow members and clients in order to point our clients in the right direction. Please contact me with such resources to possibly add to the E-newsletter and/or website as appropriate.
- Consider relationships with care coordinators or other health professionals to address the health needs of clients in order to understand any legal issues that may be impacted.
- Develop relationships with attorneys in other practice areas or MSBA Sections to coordinate legal services and to grasp how that area impacts the Elder Law client or vice versa.

Opportunity for Creative Resolution Processes, including Proposed Legislation

We may not have a “traditional” path for resolution anymore either. For instance, resolution does not always mean a court battle. Other processes may be better for the client, whether mediation as appropriate, pre-suit resolution, administrative remedies, or legislation. Many issues will require a creative, team approach for resolution. This may be a year when those in our Section believe a legislative proposal is in order. Keep in mind that any proposed legislation needs to be developed early, with an initial deadline of approximately October 2011.

Opportunity to Pave the Way for New Attorneys

With a maturing membership, the Section has the opportunity to help pave the way for new attorneys in Elder Law. The sheer breadth of information is daunting. I encourage members to reach out to new attorneys. Many new attorneys need exposure to content, language, and forms, whether research and writing or links to documents (please consider submitting key forms or links for the Elder Law Section website). Also, niche topics may pop up for experienced attorneys that they do not have the time to tackle and could be given to new attorneys to explore. At least 46 of our members are students with interest in developing this practice area. The transfer of knowledge is important since Elder Law clients will continue to have needs beyond the span of any of our careers.

Opportunity to Support Experienced Attorneys

Challenges also exist for experienced attorneys to sustain a viable practice. Changing state and federal laws and rules make it difficult to stay on top of how to advise clients. I support the Section in its ongoing efforts to pursue access to the State Plan Amendments (SPA). A current hurdle is to determine how best to disseminate changes to the hard copy documents. I also encourage members to comment on proposed regulatory changes from the Centers for Medicare and Medicaid Services (CMS) (see recent newsletter (<http://www.mnbar.org/sections/elder-law/newsletters/2010-11/05-03-11%20Eletter.pdf>) and to develop relationships with state and federal agencies in order to keep informed of rule-making and procedures.

Opportunity to Increase Awareness of Home and Community Based Programs

One of the important issues facing our clients over the next five years is home and community based service programs. State law and policy encourage people to “age in place” or receive services at home rather than a facility setting. However, regulation, policies, and funding for the home care setting are not in place to best monitor that option. Administrative remedies are limited, waivers are either insufficient or non-existent for many clients. As a Section, we need to be involved in home and community based discussions and in any proposed changes to state and federal home care legislation.

In closing, I look forward to serving the members of the Elder Law Section. Please contact me with your resources, forms, and input at suzy@schellerlegalsolutions.com.

I hope to see you at the Elder Law Institute on October 6 & 7 or at one of our Governing Council meetings, which are listed below. All Governing Council meetings are at 3:30 pm at the offices of the Volunteers of America (VOA) at 1900 Central Avenue NE, Suite 106, Minneapolis, MN 55418, unless otherwise noted:

August 19, 2011

October 7, 2011 (following the Elder Law Institute at Minnesota CLE in Minneapolis)

December 16, 2011

February 17, 2012

April 20, 2012

June 15, 2012 (Annual Meeting and Governing Council Meeting)

(Call-In Instructions: Dial 1-800-406-9170; Enter 2637797#)

Officers and Governing Council Members for 2011-2012

Welcome to Officers and Governing Council Members who were voted in at the Annual Meeting on June 17, 2011. Below is the list of Officers and Members for 2011-2012.

Officers

Chair – Suzy Scheller

Vice Chair, Laura Zydchneec

Secretary – Joel Button

Treasurer – John Kantke

Governing Council (serving either a new two year term or continuing a term for one more year)

Vicki Ahl (*re-elected*)

Mark Anderson (*re-elected*)

Marjorie Austin (*continuing*)

Stuart Bear (*re-elected*)

Joel Button (*continuing*)

Kathleen Eveslage (*re-elected*)

Margaret Grathwol (*re-elected*)

Richard Hawke (*re-elected*)

Paulette Joyer (*re-elected*)

John Kantke (*continuing*)

Kenneth LaBore (*re-elected*)

Jennifer Lammers (*continuing*)

Terrie Lewis (*newly elected*)

Vicki McIntyre (*re-elected*)

Sally Mortenson (*re-elected*)

Kristine Mullman (*re-elected*)

Laura Orr (*continuing*)

Cathryn Reher (*continuing*)

David Rephan (*newly elected*)

Sarah Rowley (*continuing*)

Suzanne Sandahl (*continuing*)

Lorie Skibbie (*continuing*)

Dan Steinhagen (*continuing*)

Jennifer Wright (*continuing*)

Julian Zweber (*continuing*)

Law Student Liaisons (serving a one year term ending June 2012)

Courtney Allensworth – William Mitchell

Brenda Galvin – William Mitchell

Analee Heath Leach – Hamline

Megan Stowers – St. Thomas

Thanks for all you do!

Sincerely,
Suzy Scheller, Elder Law Section Chair for 2011-2012

suzy@schellerlegalsolutions.com

ITEM OF INTEREST

REMINDER: ELI PLANNING COMMITTEE

Our next planning meeting is June 22! The 2011 ELI Planning Committee will meet over the summer to develop the program for this year's ELI, which will be held on October 6-7, 2011. The ELI Planning Committee will meet at the Minnesota CLE offices in St. Paul from 11:00 a.m. to 1:00 p.m. on June 22, 2011. A box lunch will be served at all meetings.

Anyone interested in serving on the ELI Planning Committee, submitting ELI program ideas, or speaking at the ELI, may contact the 2011 Elder Law Institute Chair, Suzy Scheller, at suzy@schellerlegalsolutions.com

LINK OF THE WEEK

National Elder Rights Training Project

The National Elder Rights Training Project is part of the National Legal Resource Center, a collaboration of organizations sponsored by the Administration on Aging. Its webinars are featured within the National Consumer Law Center's website. From this week's featured link, you can download PowerPoint files and recordings from the project's past webinars. The webinar topics range from undue influence and pension rights to identify theft and helping difficult clients.

Information is available at: <http://www.nclc.org/conferences-training/national-elder-rights-training-project.html>.

Submitted by Laura Orr, Esq.
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ELDER LAW NEWS

Minn. shutdown pain likely greatest at hospitals

http://www.forbes.com/feeds/ap/2011/06/17/general-mn-minnesota-shutdown_8522591.html

Hastings nursing home is cited for fatal fall

<http://www.startribune.com/local/south/123916989.html>

Swanson prepares for Minnesota government shutdown

<http://www.duluthnewstribune.com/event/article/id/201622/group/homepage/>

Medical Assistance at heart of budget dispute

<http://mankatofreepress.com/closerlook/x357071724/Medical-Assistance-at-heart-of-budget-dispute>

Minnesota joins national effort to protect vulnerable adults

<http://www.state.mn.us/portal/mn/jsp/content.do?id=-536896833&contentid=536921183&contenttype=EDITORIAL&programid=536920772&agency=Commerce>

MINNESOTA CASES

The following unpublished decision was released by the Minnesota Court of Appeals on June 13, 2011:

A10-1980

Timothy R. Helwig vs. Public Employees Retirement Association of Minnesota

STAUBER, Judge

Relator challenges a decision of the Public Employees Retirement Association (PERA) denying his request to purchase retirement credit for a period of time when he was serving in the military for the cost at which he could have purchased the credit upon his return from service in 1986. Relator argues that his requested relief is appropriate because PERA failed to notify him of his right to purchase credit in 1986. Because Minnesota law unambiguously provides that relator may purchase service credit at the present actuarial value, we affirm.

The opinion is available at:

<http://www.lawlibrary.state.mn.us/archive/ctapun/1106/opa101980-0613.pdf>

Unpublished opinions may not be cited except as provided by Minn. Stat. Section 480A.08, Subd. 3 (2009).

STATUTES, REGULATIONS, BULLETINS

DHS BULLETIN #11-25-02: Preadmission Screening: Required Activity for Nursing Facility Admission and Medical Assistance Payment. Minnesota Department of Human Services issued the following Bulletin dated June 2, 2011.

Preadmission screening activity confirms the need for nursing facility (NF) level of care and screens people for mental illness or developmental disability before admission. State and federal requirements prohibit medical assistance payment for NF services provided prior to completion of required preadmission screening.

The purpose of this bulletin is to replace expired bulletin #08-25-03. It reviews policy and practice related to preadmission screening requirements for all NF admissions. The bulletin outlines MMIS editing related to preadmission screening that is applied to NF claims under medical assistance.

To view this bulletin in its entirety, please click on the following link:

http://www.dhs.state.mn.us/main/groups/publications/documents/pub/dhs16_162344.pdf

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UPCOMING EVENTS AND CLE PROGRAMS

Hennepin County Bar Association

Webcast CLE

Mental Health and Addiction in Older Adults

June 22

Elimination of Bias Credits

<https://www.hcba.org/Calendar/Signup.aspx?EventNo=3649>

Minnesota State Bar Association

2011 Elder Law Institute

SAVE THE DATE: October 6 and 7, 2011

The Elder Law Institute (ELI), a collaboration between the MSBA’s Elder Law Section and Minnesota Continuing Legal Education, is an annual conference designed to provide educational and networking opportunities for attorneys and others interested in the practice of Elder Law. The ELI offers a wide range of educational programming, ranging from discussions of nursing home and Medical Assistance issues to legislative updates and policy analysis. ELI Attendees receive from nine to eleven Continuing Legal Education credits, depending upon the length of the conference.

Stay tuned for more information and online registration.

ELDER LAW SECTION ACTIVITIES

MA COMMITTEE MEETING: The next MA Committee meeting will be at 3:30 p.m. on Tuesday, June 28, 2011. 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. Please be reminded that the meeting location is: Estate & Elder Law Services (formerly MAO Legal Services), Monroe Village, 1900 Central Avenue NE, Suite 106, Minneapolis, Minnesota 55418. There are a few parking spaces behind the building and lots of street parking. People should walk to the back of the building and come to the back door which faces directly into the meeting room.

GOVERNING COUNCIL: The next meeting of the Elder Law Section Governing Council will be 3:30 p.m. on Friday, August 19, 2011. The meeting will be held at Estate & Elder Law Services (formerly MAO Legal Services), Monroe Village, 1900 Central Avenue NE, Suite 106, Minneapolis, Minnesota 55418. There are a few parking spaces behind the building and lots of street parking. People should walk to the back of the building and come to the back door which faces directly into the meeting room. For further information, please contact Suzy Scheller, Chair, at: suzy@schellerlegalsolutions.com.

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

Please send E-Newsletter contributions by 10 p.m. on Sunday of each week to 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/newsletter.asp>.