

**MSBA ELDER LAW SECTION E-NEWSLETTER**  
**December 21, 2010**

**E-Newsletter Editorial Staff:**

**Communications Committee Chair:** Laurie Hanson, Esq.

**Editor in Chief:** Marjorie Austin, Esq.

**Contributors:** Joel Smith, Esq., Amanda Christman, Esq., Andrea M. Palumbo, Esq., Julian Zweber, Esq.

**EDITOR'S NOTE:** There will be no E-Newsletter published on 12/28/2009 due to the holiday season. Happy Holidays!

Please join me in celebrating – and thanking – our dedicated contributors to the MSBA Elder Law Section E-Newsletter. Each week during 2010, many section members took the time to submit information for benefit of our Elder Law Section at-large. We are indebted to these loyal section members! Please know that your efforts do not go unnoticed. Thank you!

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**ITEMS OF INTEREST**

**DOUGLAS COUNTY REQUESTS DISMISSAL OF DOUGLAS COUNTY APPEAL IN LINDGREN CASE.**

On November 18, 2010, Douglas County filed a Notice of Appeal in the Lindgren case, *Douglas County v. Alexandra Kjerstyn Lindgren and Bruce D. Lindgren*, District Court File No. 21-CV-09-477, Appellate Court Docket No. A102032, reported in previous issues of this newsletter. On November 24, 2010, Douglas County notified the Lindgrens that the County wanted to withdraw from the appeal on the grounds that the Minnesota Attorney General's Office "no longer wishes to pursue the appeal." On the basis of the parties' stipulation to allow dismissal, the Minnesota Court of Appeals has dismissed the appeal. The Order is dated December 14, 2010, Docket # A10-2032.

The defendants in the Lindgren case challenged the legality of one of the transferee causes of action mandated by Minn. Stat. 256B.0595. The statute required that the county agency commence an action against transferees of assets transferred for less than fair value for recovery of the medical assistance benefits provided after a hardship waiver is granted to waive the penalty period imposed as a result of the transfer. The Douglas County District Court dismissed the action on the grounds that the state statute was in conflict with federal restrictions on recovery of medical assistance benefits correctly paid.

By withdrawing the appeal, Douglas County prevents the case from setting state-wide precedent on the legality or illegality of the transferee cause of action.

Douglas County was represented by County Attorney Christopher D. Karpan and Assistant County Attorney Megan E. Burkhammer. The Lindgrens were represented by Attorney JoEllen P. Doebbert of Alexandria, Minnesota.

Submitted by Julian J. Zweber, Esq.  
[julianzweber@qwest.net](mailto:julianzweber@qwest.net)

### **CHANGE IN PROCEDURE – INFORMAL PROBATE: HENNEPIN COUNTY**

A change in the Hennepin County Probate filing procedure was recently announced. Effective January 1, 2011, a copy of the notice of informal probate must be brought to the meeting with the County Registrar. This notice must be fully completed, except for the file number, which will be added at the meeting. This notice will be left with the Registrar for filing. The Registrar's Office emphasized that an informal estate will not be opened, a file number will not be assigned (nor will incomplete notices be retained for future completion) without the completed notice.

The attorney/applicant is responsible for publication of the notice in a legal newspaper in Hennepin County, as well as mailing of the notice to interested parties.

Here is a helpful checklist provided by the Hennepin County Registrar for preparing an informal filing:

- Application for Informal Probate
- Original Will, Codicils, Separate Writing (if testate)
- Nominations and Renunciations, if appropriate
- Certified copy of the death certificate
- Filing fee of \$322.
- Acceptance and Oath of the proposed personal representative

Additional documents, depending on facts of the case:

- Copies of trust pages, if there is a pour over will
- Acceptance and Oath of Custodian
- Preapproval of any bond – or the bond
- Notice of Intent to File Documents, if there is a Demand for Notice

The Hennepin County Registrar's Office stresses that the above procedure will be necessary to avoid delay in opening new Informal Estate cases.

Information provided by  
Hennepin County Probate  
Office of the Registrar

Questions, call (612) 348-8784 or  
(612) 348-8783.

### **LINK OF THE WEEK**

#### **ProJusticeMN: Minnesota's Legal Community Serving the Public Good**

ProJusticeMN.org is a unique collaboration of the Minnesota public interest legal community. The Minnesota Legal Services Coalition, Minnesota State Bar Association, Legal Services Advocacy Project, and the federal Legal Services Corporation worked together to develop ProJusticeMN.org. I looked (again) at this website the other day when I wanted to know more about the food support program. Did you know that there is no longer an asset test for the food support program? I saw that the website had a detailed summary of all of the changes important to our clients. It is a fabulous summary with the names of people you can contact about the legislation. Look at the 2010 summaries at: [http://www.projusticemn.org/session\\_summaries2010/](http://www.projusticemn.org/session_summaries2010/).

The website also has pleadings and information about civil, family, immigration and real estate law. The website address is: <http://www.projusticemn.org/>.

Submitted by Laurie Hanson, Chair  
Communications Committee  
MSBA Elder Law Section  
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### **ELDER LAW NEWS**

Editorial: Plan now to avoid elder cost explosion  
[http://www.startribune.com/opinion/editorials/111964959.html?elr=KArks7PYDiaK7DUqyE5D7UiD3aPc:\\_Yyc:aUoD3aPc:\\_27EQU](http://www.startribune.com/opinion/editorials/111964959.html?elr=KArks7PYDiaK7DUqyE5D7UiD3aPc:_Yyc:aUoD3aPc:_27EQU)

OUR OPINION: Fresh ideas on paying for long-term care  
<http://www.grandforksherald.com/event/article/id/187036/>

Long-Term Care Financing Recommendations By Minnesota's Non-Partisan Citizens League Provide Insights for State Governments  
[http://news.yahoo.com/s/prweb/20101214/bs\\_prweb/prweb4888674\\_1](http://news.yahoo.com/s/prweb/20101214/bs_prweb/prweb4888674_1)

What are you doing to provide for your long-term care?

<http://minnesota.publicradio.org/collections/special/columns/todays-question/archive/2010/12/what-are-you-doing-to-provide-for-your-long-term-care.shtml>

Minnesota Medicare – Medicare Health and Drug Plans in Minnesota

<http://www.medicare.org/home-mainmenu-1/travel-mainmenu-32/70-minnesota/169-minnesota-medicare.html>

MPR News – Health care law offers doughnut hole relief on Jan. 1

<http://m.mprnewsq.org/11822/show/12652d1d37e2df016d074f313af7e563&t=d44bb8d471ca9cc9f91ab63b0022338c>

Clock is ticking for Minnesota seniors on Medicare plan sign-up

<http://www.hutchinsonleader.com/news/life/clock-ticking-minnesota-seniors-medicare-plan-sign-112>

Forensic Nursing Home opens

<http://www.stpeterherald.com/news.php?viewStory=3933>

Poor training blamed in death of St. Cloud nursing home resident

<http://www.startribune.com/local/111923029.html>

Virgil Swing: State could do more for nursing-home residents

<http://www.duluthnewstribune.com/event/article/id/186630/>

Investigation concludes at Minnesota Veterans Home in Hastings

<http://www.republican-eagle.com/event/article/id/70919/>

Volunteers key for independence of aging rural Minnesotans

<http://minnesota.publicradio.org/display/web/2010/12/15/rural-american-community-survey-data-elderly-volunteers/>

Eldercare providers ill-equipped to help gay, bisexual and transgender clients, report says

<http://www.mcknights.com/eldercare-providers-ill-equipped-to-help-gay-bisexual-and-transgender-clients-report-says/article/192949/>

Minnesota farmer spreads \$3 million around his small town

[http://www.kare11.com/news/news\\_article.aspx?storyid=893329&catid=396](http://www.kare11.com/news/news_article.aspx?storyid=893329&catid=396)

Medicaid addition will help more Minnesota poor – Officials said covering 95,000 more won't cost state, but could take until October

[http://www.startribune.com/politics/local/111867494.html?elr=KArksUUUezH\\_MDC7DaaDy\\_vDEh7P:DiU](http://www.startribune.com/politics/local/111867494.html?elr=KArksUUUezH_MDC7DaaDy_vDEh7P:DiU)

## **MINNESOTA CASES**

*The following is an unpublished decision released by the Minnesota court of Appeals on December 14, 2010*

**A10-590**

***In the Matter of the Trust Created by Lottie P. Silliman, dated December 29, 1950, commonly known as The Silliman Trust.***

SHUMAKER, Judge

In this appeal and cross-appeal, the parties dispute the meaning of trust language, issues relating to fiduciary duties of the trustees, and damages to appellant as a trust beneficiary. Because we hold that the district court's conclusion as to the trust settlor's intent was erroneous, that the district court's finding that the trustees breached their fiduciary duties was correct and supported by the evidence, and that the court's calculation of damages to appellant was premised on an incorrect measure of damages, we affirm in part, reverse in part, and remand.

The opinion is available at:

<http://www.lawlibrary.state.mn.us/archive/ctapun/1012/opa100590-1214.pdf>

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

**STATUTES, REGULATIONS, BULLETINS**

**DHS BULLETIN #10-25-11: 2011 Changes to Elderly Waiver Service Criteria for 24 Hour Customized Living**

The purpose of this bulletin is to communicate 2009 legislative changes that update criteria for the authorization of 24 hour customized living service which become effective January 1, 2011 and to announce changes to MMIS to support program integrity. The bulletin, dated 12/20/10 is available at:

[http://www.dhs.state.mn.us/main/groups/publications/documents/pub/dhs16\\_156218.pdf](http://www.dhs.state.mn.us/main/groups/publications/documents/pub/dhs16_156218.pdf)

**STATE REGISTER, Volume 35, Number 24, released Monday, December 13, 2010, Pages 883-906.**

Information relative to Elder Law includes Human Services Department (DHS) Aging and Adult Services Division and Health Care Operations Unit:

Listening Session on PACE (Program for All-Inclusive Care of the Elderly) January 13, 2011..... 894

[http://www.comm.media.state.mn.us/bookstore/stateregister/35\\_24.pdf](http://www.comm.media.state.mn.us/bookstore/stateregister/35_24.pdf)

**UPCOMING EVENTS AND CLE PROGRAMS**

**Ethics in Representing Elderly Clients**

**Hennepin County Bar Association**

**Tele-Seminar**

January 21, 2011

Contact Information: <https://www.hcba.org/Calendar/Signup.aspx?EventNo=3421>

**Elder Law 2011 and Beyond: Selected Topics**

**Hennepin County Bar Association**

**CLE XL**

January 26, 2011

Contact Information: <https://www.hcba.org/Calendar/Signup.aspx?EventNo=3409>

**ELDER LAW SECTION ACTIVITIES**

**MA COMMITTEE MEETING:** The next MA Committee meeting will be at 3:30 p.m. on Tuesday, December 21, 2010. Topics for the meeting may be submitted to MA Committee Chair, Cathryn Reher, at [creher@mnellderlaw.com](mailto:creher@mnellderlaw.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. **Attention: The meeting location has changed to 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, February 18, 2011, **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 Jennifer Wright, Chair, at [jlwright1@stthomas.edu](mailto:jlwright1@stthomas.edu).

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

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Please send E-Newsletter contributions by 10 p.m. on Sunday of each week to Marjorie Austin at [mj@mjaustinlaw.com](mailto: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](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://www2.mnbar.org/sections/elder-law/newsletter.asp>.