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MSBA ELDER LAW SECTION E-NEWSLETTER
October 2, 2017

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E-Newsletter Editorial Staff:
Communications Committee Chair: Rachel Schromen
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NEWSLETTER HIGHLIGHTS

2017 Elder Law Institute

The 2017 Elder Law Institute is scheduled for October 12 and 13, 2017. Registration is now open on Minnesota CLE's website.

CLE: Financial Exploitation and Elder Abuse: Mom Says She's "Fine" but the Stash of Money in her Coffee Can is Gone.

A discussion of the elements of financial exploitation and elder abuse, how to recognize abuse and what are the legal remedies in the law, both criminal and civil available to our clients. Further analysis of what is the role of the lawyer as counselor when we see abuse for our own clients and are we able to help or report given our duty of confidentiality.

Presented by Pook Grathwol and David A. Rephan.

Friday, October 27, 2017. Lunch and registration will begin at 11:30 AM. The program will begin at 12:00 PM.

$10 for Elder Law section and Probate and Trust Law section members, $25 for MSBA members, $30 for non-MSBA members, Free for law students.

Remote participation will be available. Please indicate remote participation when registering.

Registration deadline is October 25, 2017. For more information, or to register, please visit mnbar.org.

Please contact Tram Nguyen with questions at tnguyen@mnbar.org or by phone at (612) 278-6316.

EVENTS SCHEDULED IN THE NEXT MONTH

GOVERNING COUNCIL:

October 12, 2017 7:30 am at MSBA Presidents Room

For further information, please contact Tram Nguyen, section services manager, at tnguyen@mnbar.org or 612-278-6316.

LAW STUDENT COMMITTEE:

October 16, 2017 at 8:00 a.m.

MA COMMITTEE:

October 17, 2017 at 3:30 p.m.

The Medical Assistance Committee is a study group to analyze the members' questions and case studies and to discuss administrative policies and procedures in relation to Medical Assistance in Minnesota. For directions, or to attend by phone, please contact Traci Sherman with Pluto Legal, PLLC, at tsherman@plutolegal.com or 507-247-5900 at least 24 hours in advance of the meeting. Topics for the meeting may be submitted to tsherman@plutolegal.com under the subject heading "MA Committee Topic," or faxed to 507-247-5868.

The Committee is hosted by Estate & Elder Law Service at Monroe Village, 1900 Central Avenue NE, Minneapolis, MN 55418. Parking is available behind the building and along adjacent streets. In-person attendees should enter through the door facing the parking lot behind the building. This door leads directly into the community room.

PRO BONO COMMITTEE:

October 27, 2017 at 12:00 p.m.

The meeting will take place via telephone. Please contact mayamissaghi@gmail.com if interested and for call-in details!

ELDER LAW NEWS

Estate Tax Exemption Projected to Top $11 Million Per Couple in 2018.

Medicare Will Mail New Cards to 60 Million People.

Nursing Homes and Emergency Preparedness.

Please submit news articles of interest to emily.flesch@mitchellhamline.edu.

QUESTIONS AND ANSWERS FROM THE MSBA COMMUNITIES

Q1: Elderly married couple who currently live independently (but are in failing health) wish to purchase burial space items for their adult children pursuant to a burial contract. The couple do not receive any public assistance (other than their monthly Social Security benefits), and none of their children are dependents.

If the couple purchase burial space items for their children, will this be considered either an uncompensated transfer or an available asset if either or both of them apply for long term care benefits through MA in the future?

From reviewing the Eligibility Policy Manual and the above citation, it appears this is allowed. I have not come across this situation before and it looks too good to be true, so I am afraid I am missing something here. Any confirmation or guidance is appreciated.

If the couple are permitted to purchase burial space items for their children without jeopardizing their MA eligibility, then does this also extend to funding a single-premium life insurance policy for the benefit of a child and irrevocable assigned to any funeral home?

A1: Minnesota funeral directors believe this is allowed. It makes me nervous. The burial space exclusion clearly applies to burial spaces and burial space items already owned by an individual for use by various family members.

It appears that county financial workers are allowing excess assets to be used to purchase burial spaces and burial space items for family members as a way of reducing excess assets. When an individual or spouse purchases an insurance policy to pay for funeral expenses and irrevocably assigns the policy to pay for the goods and services identified at the time of purchase, the purchase of the life insurance policy or annuity product is treated as a purchase for value, and the policy value will not be treated as available to the individual after purchase. As a purchase for value, this arrangement passes muster.

It has always seemed less clear to me that purchasing goods and services for other individuals passes the same test. Yet, these arrangements are being suggested by funeral directors all over the state, and passing muster under current MA policies. In my opinion, this is an area that is not rock solid. I don't recommend it, but my clients have done it. So far, no problem.

Setting aside funds for funerals can be a complicated topic under the MA guidelines. Jill Sauber's response has caused me to review the current Eligibility Policy Manual guidance on reducing excess assets by purchasing funeral arrangements for extended family members.

The EPM is clear that an applicant and spouse can own these items, in which case they will not count against asset limits.

The EPM 2.2.3.2.7.11 (the Burial Space Exclusion or BSE) also states that an applicant can hold burial contracts and burial space items for certain family members.

This exclusion is limited to burial space items. Burial space items include the burial site, a repository for bodily remains, services performed at the burial site, and items related to the burial site. Only burial space items (BSI) may be excluded under the BSE. Burial services are never excluded under the BSE. *Id.*

Contracts for burial services can be excluded, however, under the separate Burial Contract Exclusion (BCE).

We recently sent a client to pre-pay funeral expenses for her unmarried adult daughter who was reducing excess assets to MA eligibility. The funeral home suggested $65,000 in funeral arrangements for the daughter, her mother and her two siblings.

After reviewing the proposal, we reduced the total considerably, mostly because there were other bills to pay and there was insufficient time to ask the siblings what they wanted for funeral. We limited the arrangements to burial space items for the siblings. The final expenditures were submitted to the county with proper documentation, and were allowed.

Nevertheless, the financial worker gave strict scrutiny to the expenditures for the mother or siblings. Although the spending passed muster in this case, I am still nervous about this strategy for reducing excess assets. Usually we have better targets for reducing excess assets than funeral expenses for the extended family. And of course, if these items were purchased prior to the five-year look-back period, I would have no qualms about them.

Recognizing that these expenditures must be irrevocable to be effective, a change in future asset reduction policy could be problematic. My only concern is that expenditures for funeral for extended family members could be considered uncompensated transfers and thus penalized.
So far, pre-payment of funeral expenses for extended family members appears to be working to reduce excess assets during the look-back period, but I've been around long enough to know that DHS can change policies to make accepted policies no longer acceptable, especially when DHS believes that current policies are being abused.

Submitted by: Julian Zweber, julianzweber@qwestoffice.net

DIVERSITY COMMITTEE

On August 16, 2016, the Elder Law Council established our section's Diversity Committee, with Jeanine Hill as its original chairperson. Jean Gustafson of Brainerd will be chairing the committee for the coming year. If you would like to join the committee, please contact Jean Gustafson at jean@guslaw.net.

ELDER LAW CASES

The Minnesota Court of Appeals filed an unpublished opinion on September 5, 2017, upholding a district court's findings that an older person's adult child 1) was a caregiver within the meaning of Minn. Stat. § 626.5572, subd. 4 (2016) and 2) emotionally abused and neglected the older person. The court also found that a treating physician's failure to provide a Tennessen warning to the adult child was harmless error. The case, *McCabe v. Piper* (Minn. App. 2017), may be accessed via the Minnesota State Law Library's public archive.

Submitted by Laura Orr

Please submit Elder Law cases of interest to emily.flesch@mitchellhamline.edu

STATUTES, REGULATIONS, BULLETINS

Please submit statutes, regulations, or bulletins of interest to emily.flesch@mitchellhamline.edu

ELDER LAW SECTION ACTIVITIES

ADVOCACY SUPPORT COMMITTEE:

Contact Laura Zdychnec at lzdychnec@mnelderlaw.com for more information.

COMMUNICATIONS COMMITTEE:

The Communications Committee oversees the monthly Elder Law E-Newsletter and the Elder Law Section website. The committee is re-forming, and is composed of the newsletter editor, web editor, associate editors and contributors, and any other interested section members. Meetings are to be held every other month to review issues related to the newsletter and the website, and to conduct an annual member survey. Upcoming meetings for the Communications Committee are as follows:

September 13, 2017 at 8:30 a.m.
November 8, 2017 at 8:30 a.m.
January 10, 2018 at 8:30 a.m.
March 14, 2018 at 8:30 a.m.
May 9, 2018 at 8:30 a.m.
July 7, 2018 at 8:30 a.m.
September 12, 2018 at 8:30 a.m.
November 14, 2018 at 8:30 a.m.

The meeting location is Schromen Law, 600 Marshall Avenue, Saint Paul, MN 55102.

Anyone interested in serving on the committee or suggesting ideas for the newsletter or website may contact Communications Committee chair Rachel Schromen at rachel@schromenlaw.com or 651-571-2515.

GOVERNING COUNCIL:

The Elder Law Section Governing Council will meet at the following dates and times during the MSBA year ending in June 2018:

October 12, 2017 7:30 am at MSBA Presidents Room
December 15, 2017 3:30 pm at Monroe Village Community Room
February 16, 2018 3:30 pm at Monroe Village Community Room
April 20, 2018 3:30 pm at Monroe Village Community Room
June 15, 2018 3:30 pm at Monroe Village Community Room

Monroe Village is located at 1900 Central Avenue NE, Minneapolis, Minnesota 55418. Parking is available behind the building and along adjacent streets. In-person attendees should enter through the door facing the parking lot behind the building. This door leads directly into the community room. For further information, please contact Tram Nguyen, section services manager, at tnguyen@mnbar.org or 612-278-6316.

LAW STUDENT COMMITTEE:

The Law Student Committee helps attract students to become the next generation of elder law attorneys. The committee meets as needed during the school year. Our goal for this bar year is to host a panel event at each local law school where students can ask questions about the practice of elder law. We are always looking for other ways to engage students, so please feel free to attend meetings and make suggestions.

October 16, 2017 at 8:00 a.m.

The meeting will be held at the University of St. Thomas Law School. If you have questions about the committee, contact Jack Austin at john.j.austin3@gmail.com

MA COMMITTEE:

The 2017-2018 Medical Assistance (MA) Committee meetings will be at 3:30 p.m. on the third Tuesday of even-numbered months:

October 17, 2017 at 3:30 p.m.
December 19, 2017 at 3:30 p.m.

The Medical Assistance Committee is a study group to analyze the members' questions and case studies and to discuss administrative policies and procedures in relation to Medical Assistance in Minnesota. For directions, or to attend by phone, please contact Traci Sherman with Pluto Legal, PLLC, at tsherman@plutolegal.com or 507-247-5900 at least 24 hours in advance of the meeting. Topics for the meeting may be submitted to tsherman@plutolegal.com under the subject heading "MA Committee Topic," or faxed to 507-247-5868.

The Committee is hosted by Estate & Elder Law Service at Monroe Village, 1900 Central Avenue NE, Minneapolis, MN 55418. Parking is available behind the building and along adjacent streets. In-person attendees should enter through the door facing the parking lot behind the building. This door leads directly into the community room.

NEW LAWYERS COMMITTEE:

Meetings will be held the second Thursday of even-numbered months at noon. Each meeting has a different topic based upon input from the new lawyers committee. Minutes of past meetings are available. The meetings are formatted so that a seasoned elder law attorney will speak for the first half hour, and the second half hour will be questions and answers.

Upcoming meeting dates to be announced.

Meetings will be held at Chestnut Cambronne PA, 17 Washington Ave N #300, Minneapolis, MN, 55401. Please contact Pook Grathwol at pgrathwol@chestnutcambronne.com or (612) 336-2919.

PRO BONO COMMITTEE:

Meetings will be held on the third Friday of every other month from 12-1pm unless otherwise communicated. Meetings will be held at Chestnut Cambronne PA, 17 Washington Ave N #300, Minneapolis, MN, 55401.

Upcoming meeting dates:

November 17, 2017 at 12:00 p.m.

Questions may be directed to Maya Missaghi at mayamissaghi@gmail.com.

STRATEGIC PLANNING COMMITTEE:

October 30, 2017 at 3:30 p.m.

The next Strategic Planning Committee meeting will be held at the law office of Maser, Amundson, Boggio & Hendricks, P.A., located at 6601 Lyndale Avenue South, Suite 320, Richfield, MN 55423. Questions may be directed to Brenna Galvin at bgalvin@maserlaw.com.

VULNERABLE ADULT COMMITTEE:

Contact Marit Peterson at marit.peterson@elderjusticemn.org or 651-440-9303, if you are interested in participating in this committee.

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The MSBA Elder Law Section's Website contains information about section committees and leadership. It also contains useful practice resources.

You may email Bridget-Michaele Reischl at bridget@decorolaw.com to suggest changes to website content.

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Please send E-Newsletter contributions by 10 p.m. on the last day of each month to Emily Flesch at emily.flesch@mitchellhamline.edu. The e-newsletter is distributed on the first Monday of each month. If the first Monday occurs on a holiday, the newsletter will be distributed on the following Monday.

If you do not wish to receive this E-Newsletter, send your request to be removed from the mailing list to Tram Nguyen at tnguyen@statebar.gen.mn.us

Current and prior E-Newsletters are posted on the website for the MSBA Elder Law Section and are available here.