

MSBA ELDER LAW SECTION E-NEWSLETTER
September 11, 2017

Vol. 9, No. 33

E-Newsletter Editorial Staff:

Communications Committee Chair: Rachel Schromen

Editor in Chief: Emily Flesch

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Contributors: Rachel Schromen, Julian Zweber, Joel Smith

NEWSLETTER HIGHLIGHTS

Disclosure Requirement for Providers of “Veterans Benefits Services”

Effective August 1, 2017, you can face a \$1,000 civil penalty for providing a paying client advice about veterans benefits without having the client first sign a written disclosure [form](#). Don't miss Mary Frances Price's piece in the Statutes, Regulations, and Bulletins section below to learn more.

Nominations Sought For Elder Law Section Awards

The Awards Committee of the Elder Law Section is seeking nominations for Section awards to be presented at the Minnesota CLE Elder Law Institute on October 12, 2017. Nominations are being sought for the following Awards:

The Mary Alice Gooderl Memorial Award

The Mary Alice Gooderl Memorial Award is presented by the Elder Law Section to acknowledge outstanding contributions to the field of Elder Law by a member of the Elder Law Section, as exemplified by Mary Alice Gooderl, one of the founders of the Elder Law Section.

The Lifetime Service Award

The Lifetime Service Award is presented to a member of the section who has made outstanding contributions to the Elder Law Section over an entire career or many years of service.

The Elder Law Section Hall of Fame

The Elder Law Section Hall of Fame was started in 2015. The criteria for admission to the Hall of Fame include:

1. Membership in the Elder Law Section.
2. Success in litigation or other public or private advocacy having a substantial positive impact on the elderly or on the way Elder Law attorneys practice Elder Law.
3. Success in persuading CMS, DHS or another government agency to adopt substantial positive changes in medical assistance or other government programs or policies affecting the Elderly.
4. Publication of important works in the literature or other media to educate consumers or Elder Law attorneys regarding any important subject affecting the Elderly.
5. Success in obtaining legislation to protect or improve the rights or condition of the Elderly.
6. Efforts to accomplish the criteria in sections 1 to 4 that fall short of success but still deserve recognition for substantial efforts toward an important goal.
7. Other important activities by Section members that the committee members believe deserve recognition in our Hall of Fame.

Special Recognition Awards

These awards are for special efforts or accomplishments of a more isolated nature that deserve special recognition since the last Awards ceremony.

Nominations will close at 5 pm on Friday, September 15, 2017. Please submit nominations to Julian J. Zweber at 1360 Energy Park Drive, Suite 310, St. Paul, MN 55108-5252, telephone 651-646-4354 or 651-646-4539 (FAX) or julianzweber@qwestoffice.net.

Submitted by Julian J. Zweber and Stuart C. Bear, Chair and Vice-Chair, Awards Committee

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](#).

Elder Law Institute Scholarships!

The MSBA Elder Law Section has allocated funds to offer up to four (4) scholarships to attend the [2017 Elder Law Institute](#). The institute occurs on October 12 and 13, 2017, at the Minnesota CLE Conference Center in Minneapolis. Each scholarship covers the complete cost of tuition. (Recipients will need to cover any other expenses that they may incur.)

To qualify, 1) you must practice at least partly in elder law, 2) you must be practicing law within a solo, small firm, legal aid, or public interest law practice in either a paid or unpaid capacity, and 3) you must either reside over 150 miles from the Twin Cities or have started your practice in elder law within the last three (3) years. Unemployed and underemployed attorneys are particularly encouraged to apply. Applications are available on the Elder Law Section's [website](#).

Interested applicants must apply by midnight on Friday, September 22, 2017. Scholarship recipients will be notified by Tuesday, September 26, 2017. Scholarship recipients must be

MSBA Elder Law Section members by October 12, 2017; however, applicants do not need to be section members in order to apply and be selected. Previous recipients of scholarships from the MSBA Elder Law Section are ineligible.

Please visit the [application document](#) for further information.

EVENTS SCHEDULED IN THE NEXT MONTH

Free Section-Sponsored CLE in Baxter, MN: Planning Considerations for Attorneys Advising LGBT Seniors Following *Obergefell v. Hodges*

When: Friday, September 15, 2017, 5 P.M. to 7 P.M.

Where: Prairie Bay Restaurant, 15115 Edgewood Drive, Baxter, MN

Attorneys Lori Guzman and Jean Gustafson will provide practice tips and pitfalls for elder law attorneys serving LGBT clients in the post-*Obergefell v. Hodges* world. *Obergefell v. Hodges* does not protect LGBT seniors from intervention by their biological family or potentially biased court officials in carrying out their estate wishes. Register or learn more on the [MSBA website](#).

COMMUNICATIONS COMMITTEE:

September 13, 2017 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.

NEW LAWYERS COMMITTEE:

September 14, 2017 at 12:00 p.m.

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.

LAW STUDENT COMMITTEE:

September 25, 2017 at 8 a.m.

The meeting will be held at the University of St. Thomas Law School. Room TBD. Questions may be directed to Jack Austin at john.j.austin3@gmail.com.

PRO BONO COMMITTEE:

September 15, 2017 at 12:00 p.m.

Meetings will be held at Chestnut Cambronne PA, 17 Washington Ave N #300, Minneapolis, MN, 55401. Questions may be directed to Maya Missaghi at mayamissaghi@gmail.com

STRATEGIC PLANNING COMMITTEE:

September 21, 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.

ELDER LAW NEWS

[Alzheimer's is very often a workplace issue.](#)

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

QUESTIONS AND ANSWERS FROM THE MSBA COMMUNITIES

Q1: Granddaughter had her grandmother co-sign on her mortgage a few years ago. She has proof that Grandma put no money into the house.

Grandma is now on MA and joint on the deed. Granddaughter did provide both counties with proof that Grandma had no money in the house, and they did not count it against her for eligibility reasons. The mortgage company will not allow Grandma to be removed from deed (unless they refinance with a new co-signor).

From my research, it looks like MA can and, I expect will, file a lien on the home after Grandma passes. None of the statutory exceptions apply – grandma never lived there, granddaughter did not care for her, no spouse, no special needs child. The best case scenario I can see is applying for the hardship waiver at that point based on the fact that Grandma put no funds into the house.

1. Any one tried a hardship waiver in a similar situation? How rarely are they granted?
2. Would it help to refi with Mom and Dad co-signing, and replacing Grandma on the deed?

A1: MA wanted proof that Grandma did not contribute any funds to purchase of the property beyond the value of the interest she received in return. She only co-signed the loan to contribute

her credit-worthiness to the transaction without contributing any cash to the purchase. She got a joint interest in the property without contributing any cash. Therefore, the purchase is not an uncompensated transfer during the look-back period.

Real property held in joint tenancy with someone other than your spouse is not treated as an available asset. So Grandma's continued ownership of the joint interest will not affect her eligibility for MA. Granddaughter does have a problem after Grandma dies. According to Minn. Stat. 256B.15, the joint tenancy continues after Grandma's death and MA could assert a claim against it.

I doubt that MA would try to force any recovery, but any attempt to re-finance or sell before or after Grandma dies will probably be a problem. A lien could be filed under Minn. Stat. 514.981, subd. 2, clause (b) because grandchild is not one of the persons protected against the filing. A hardship waiver applies only after Grandma dies and it is only temporary. Under the Estate of Grote case (MA claim against homestead held in joint tenancy when MA spouse died), the MA claim could extend against the full value of the property, but only upon sale. Removing Grandma from title could be treated as an uncompensated transfer unless a court rules that Grandma is not entitled to compensation for the removal.

If money was available, I would urge an action to determine adverse claims to determine that Grandma holds has no equity in the property and her name can be safely removed without causing an MA problem. Faced with a lawsuit which includes the county agency, the county agency might agree to allow Grandma's name to be removed without penalty. This problem only gets worse after Grandma dies.

Q2: Client is the guardian and conservator for mother who is on MA. Felonious sister is paying court ordered restitution to mother at \$100 per month. Restitution is not counted as income for MA purposes. Hence the below questions regarding unspent restitution and estate recovery.

Is unspent restitution income considered an exempt asset for MA eligibility and estate recovery purposes? What is the legal authority?

A2: Restitution for stolen assets is not specifically included in the EPM. Note that reimbursement for stolen excluded assets (for example, household goods, personal goods, an excluded motor vehicle) is not immediately available against asset limits, but if the evil daughter stole cash, cash is only excluded up to \$3,000 at the time application and thereafter. I'm not sure whether this would be of much help in protecting more than \$3,000 in available assets at the time of eligibility renewal. Whatever is owned by the MA recipient at the time of death would be subject to estate recovery, but would be subject to higher priority claims (for expenses of administration, reasonable funeral expenses, and debts and taxes with preference under federal law) and delayed recovery if there is a surviving spouse or a protected relative. See Minn. Stat. 256B.15, subds. 3 and 4. Estate recovery only applies to the assets listed in Minn. Stat. 256B.15, subd. 1a.

P.S. I expect that restitution remaining unpaid at the decedent's death would be treated as an account receivable asset of the decedent's probate estate and subject to MA estate recovery as it

becomes due and payable. I doubt that MA could force acceleration of the payments, but would probably be willing to discount the payments for prepayment in cash.

Q3: Can the restitution payments be excluded as “crime victim payments” under EPM § 2.3.3.2.3?

A3: Crime victim payments are specifically excluded from income under EPM § 2.3.3.3.2.3 Excluded Income. The EPM, Appendix A, defines “crime victim payments” as “payments made to compensate crime victims for losses resulting from a crime.” The original question indicated that the daughter was found guilty of a felony and ordered to pay restitution of \$100 per month. Crime victim payments are authorized by Minn. Stat. §§ 611A.51 to 611A.68, which are known as the "Minnesota Crime Victims Reparations Act." Restitution appears to be a collateral source that reduces reparation payments under the Act. Minn. Stat. § 611A.54 Amount of Reparations, clause (1).

Generally speaking, MA treats income from non-excluded sources as income in the month of receipt. If not spent in the month of receipt, the unspent portion becomes part of the recipient’s assets at the beginning of the following month, unless the unspent portion is excluded temporarily or permanently from assets. EPM § 2.3.3.2 Assets. Crime victim payments are excluded as assets in EPM § 2.3.3.2.3. The answer to the question whether restitution payments are excluded from income (and from assets) turns on whether the exclusion for crime victim payments is intended to apply only to reparation payments under the Crime Victims Reparations Act or could stretch to include court-ordered restitution payments. Jennifer Wright reports success with this argument.

Submitted by: Julian Zweber, julianzweber@qwestoffice.net

NEWLY FORMED 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

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

STATUTES, REGULATIONS, BULLETINS

STATUTORY UPDATE: Minn. Stat. 197.6091

The end of the 2017 Minnesota legislative session was filled with excitement and a few surprises. Some of the surprises impacting estate and elder law practices, like the last minute changes to the estate tax laws, were visible immediately and well covered at the 2017 Probate and Trust Conference and other outlets. However, one change impacting many estate and elder law practitioners is just now coming to light for many.

Unbeknownst to many, the Military Affairs Bill included the Veterans Benefits Service Disclosure Requirement under Minnesota Statute 197.6091. This new statute requires private and for-profit providers of veterans benefits services to meet certain requirements before providing services to veterans. Veterans benefits services include “any services that a veteran or a family member of a Veteran might reasonably use in order to obtain federal, state, or county veterans benefits.”¹

The author of the house bill, state representative Tony Cornish states the intended purpose of the legislation is to protect veterans “from paying for services they could get for free at a government veterans service office.” This position is consistent with long-standing federal law that has imposed limits on agents and attorneys regarding billing for legal services.² What this Minnesota Statute seems to have overlooked, however, is the impact this will have on estate and elder law planners who incorporate veterans benefits planning as part of a broader conversation when building a comprehensive estate and long-term care plan.

In an effort to provide the most valuable and comprehensive legal plan for families dealing with significant medical expenses, elder law attorneys analyze the use of Medicare, Medicaid, private resources, and veterans benefits that may assist in the payment of long-term care services.³ Under the new law, such attorneys must provide a written disclosure statement to each client or prospective client, and must obtain the client’s signature on a written disclosure statement.⁴ Failure to comply with these requirements could result in a civil penalty up to \$1,000 for each violation.

While the spirit of the law and the intention to protect veterans and their families is well-meaning, the law fails to recognize the role an independent advocate, like a VA accredited elder law attorney, may have in representing veterans. While it’s true that there are many government sponsored resources for veterans, these free resources are limited in their ability to assist in developing an overarching plan which evaluates ALL options including, but not limited to, veterans benefits. A veteran who wants to develop a plan that coordinates all government benefits (Medicare, Medicaid, and Veterans Benefits) and aligns that with correct legal documents like powers of attorney, wills, trusts, and health care directives may wish to do so with an attorney. Veterans and their families may choose to contract and pay privately for some of these advanced planning services. Hence, attorneys practicing in this area need to address how they will comply with the terms of this new law when representing veterans and their family

¹ See Minnesota Statute 197.6091 Sub.1(d)

² See USC Title 38, Part IV, Chapter 59, sections 5901-5904

³ Long-term care services are generally not covered by Medicare or other health insurance. Under the Medical Assistance program in Minnesota, such services include nursing home care, home and community based care, and certain hospital and prescription drug expenses.

⁴ See Minnesota Statute 197.6091 Subd.3

members.

Submitted by: Mary Frances Price, MFPrice@mnelderlaw.com.

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.

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 nguyen@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. Our next meeting will be held at the University of St. Thomas Law School, room to be determined.

September 25, 2017 at 8:00 am

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](tel: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](tel: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:

September 14, 2017 at 12:00 p.m.

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:

September 15, 2017 at 12:00 p.m.

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

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

STRATEGIC PLANNING COMMITTEE:

September 21, 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.

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.

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](#).