

## MSBA ELDER LAW SECTION eNEWSLETTER

October 9, 2007

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**BARG ALERT.** Special notice for those who have been following the *Barg* case: The Minnesota Supreme Court is scheduled to hear oral arguments on Tuesday, November 6, 2007. This is a Medical Assistance recovery case in which the county has filed a claim against the estate of the surviving spouse, who did not receive any Medical Assistance benefits. The Summary of Issues prepared by the Minnesota Supreme Court Commissioner's Office appears below, under "Minnesota Cases," along with details of the hearing.

The published Minnesota Court of Appeals *Barg* opinion dated October 17, 2007, is available at: <http://www.lawlibrary.state.mn.us/archive/ctappub/0610/opa052346-1017.htm>

**DARLENE LUTHER REVISED ANATOMICAL GIFTS ACT.** Information on the proposal for technical amendments to this Act is now posted on the Elder Law Section Website. See details under "Statutes," below. The Elder Law Section Council will vote on supporting the proposed technical amendments to the Act at its meeting on October 26, 2007.

### **ELDER LAW NEWS**

Need for long-term care doesn't always depend on age  
<http://www.hutchinsonleader.com/node/4524>

Met Life releases national data on hourly rates for adult day care, home health aids  
[http://home.businesswire.com/portal/site/google/index.jsp?ndmViewId=news\\_view&newsId=20070926005048&newsLang=en](http://home.businesswire.com/portal/site/google/index.jsp?ndmViewId=news_view&newsId=20070926005048&newsLang=en)

Minnesota management company buys Wisconsin LTC facilities  
[http://www.zwire.com/site/news.cfm?newsid=18855981&BRD=1134&PAG=461&dept\\_id=150860&rfi=6](http://www.zwire.com/site/news.cfm?newsid=18855981&BRD=1134&PAG=461&dept_id=150860&rfi=6)

Minnesota Senior Federation receives AoA funding to support Upper Midwest Pension Rights Project

[http://www.associatedcontent.com/article/401421/administration\\_on\\_aging\\_funds\\_projects.html](http://www.associatedcontent.com/article/401421/administration_on_aging_funds_projects.html)

Allianz Settles First Annuity Lawsuit

<http://www.startribune.com/535/story/1463304.html>

Allianz Cash Bonus Annuity Class Action Website

<http://www.cbasettlement.com/>

New lease agreement studied by Elbow Lake Seniors

<http://www.fergusfallsjournal.com/news/2007/oct/08/new-lease-agreement-studied-elbow-lake-seniors/>

### **ELDER LAW SECTION ACTIVITIES**

#### **THE ELDER LAW SECTION LEGISLATIVE COMMITTEE IS LOOKING FOR ADDITIONAL MEMBERS**

The 2008 session of the Legislature convenes on February 8, 2008. The Elder Law Section's Legislative Committee is looking for additional members. The Legislative Committee seeks proposals from section members for new legislation or amendments to existing statutes; develops legislative proposals and supporting information; proposes legislation to be added to the MSBA legislative agenda; works with the MSBA lobbyist; reviews legislative proposals submitted by other Bar sections; reviews legislative proposals during session and provides information to the MSBA lobbyist and the legislature on topics of importance to Elder Law attorneys.

Even if you are unable to contribute time to the committee, you are welcome to join the distribution list. Julian Zweber and Lori Guzman will be co-chairing the committee for the coming session.

Please let Julian know if you would like to join the committee or just be part of the Legislative Committee e-mail distribution list. You may contact Julian at [julianzweber@qwest.net](mailto:julianzweber@qwest.net)

Current Legislative Committee members are:

Lori Guzman, Co-Chair

Jacob Baker

Jonathan Dyrud

Richard Hawke

Thomas B. Wilson III

Jennifer Wright

Suzanne Sandahl

Vicki McIntyre  
Julian Zweber Co-Chair and Legislative Coordinator

### **NOMINATIONS SOUGHT FOR MARY ALICE GOODERL AWARD**

The Awards Committee of the Elder Law Section is seeking nominations for the Mary Alice Gooderl Memorial Award. This Award is presented by the Elder Law Section annually (or less frequently) to acknowledge outstanding contributions to the field of elder law by members of the Elder Law Section as exemplified by Mary Alice Gooderl, one of the founders of the Elder Law Section. Time has been set aside at the Minn.CLE Elder Law Institute on Thursday, October 25, 2007, to present the Award, if one is to be presented this year. Nominations will close at 5pm on October 12, 2007. Please reply to Julian Zweber at [julianzweber@qwest.net](mailto:julianzweber@qwest.net)

### **MEDICAL ASSISTANCE COMMITTEE MEETING TUESDAY, OCTOBER 16, 2007**

If you don't know about the Medical Assistance Committee, why not come to a meeting to find out more? The purpose of the committee is to explore Medical Assistance issues that arise in practice and to share information about developing laws and policies. Cathryn D. Reher of Long, Reher & Hanson, P.A., and Jeffrey W. Schmidt of Schmitz and Schmidt, P.A. are the co-chairs of the committee. All private attorneys who are members of the Elder Law Section are eligible for membership.

The Medical Assistance Committee meets the third Tuesday of each month at 3:30 p.m. at the MAO Offices located at 2021 E. Hennepin, Suite 200, Minneapolis, Minnesota. The next scheduled meeting is Tuesday, October 16, 2007. Out-state members may participate by phone.

If you are interested in joining the committee or attending by phone, please contact Tracie Fenske with Long, Reher & Hanson, P.A., at 952-929-0622.

### **17TH ANNUAL ELDER LAW INSTITUTE TO BE HELD OCTOBER 25-26, 2008**

Register now for the 17th Annual Elder Law Institute to be held October 25-26, 2008, at the Minnesota CLE Conference Center in Minneapolis. To register, call 651-227-8266 or 800-759-8840, or go online at [www.MinnCLE.org](http://www.MinnCLE.org).

**Don't miss the reverse mortgage panel** at 9:00 am on October 26th. A panel of experts, including a reverse mortgage lender, a reverse mortgage counselor, and an attorney with a creative solution for providing home health care, will talk about the reverse mortgage as a tool to leverage home equity.

**The new Elder Law Handbook** will be reviewed at 1:45 pm on October 26th. Learn about the new perspective provided by the handbook. **SPECIAL OFFER:** Get the all new Elder Law Handbook at 25% off the regular price by attending the conference! **The Elder Law Section Governing Council meeting** will be held at 7:30 am in the MSBA offices, across the hall from the Minnesota CLE Conference Center. All Elder Law Section members are encouraged to attend. (Breakfast will be served!)

### **MINNESOTA CASES**

*In re the Estate of: Francis E. Barg, a/k/a/ Francis Edward Barg*  
Case No. A05-2346  
Tuesday, November 6, 2007, 9:00 a.m.  
Courtroom 300, Minnesota Judicial Center

Dolores and Francis Barg held their homestead in joint tenancy during their marriage. In 2001, Dolores transferred her interest in the homestead to her husband, Francis, and entered a nursing home. Between 2001 and her death in 2004, Dolores received medical assistance benefits. Five months after Dolores' death, Francis died. Federal law allows the county to recover medical assistance benefits paid to an individual over age 55 "from the individual's estate" after the death of the surviving spouse. 42 U.S.C. § 1396p(b)(1)(B), (b)(2) (2000). Minnesota Statutes § 256B.15, subd. 2 (2006), allows the county to recover benefits paid for Dolores from Francis's estate but limits the county's claim to "the value of the assets of the estate that were marital property or jointly owned property at any time during the marriage." The probate court allowed only a portion of the county's claim equal to the value of a life estate in the homestead. The court of appeals reversed, limiting the amount to be paid on the county's claim to the value of an undivided half-interest in the homestead. At issue before the supreme court are: (1) whether Dolores had any interest in the homestead at the time of her death; and (2) if Dolores had an interest in the homestead at the time of her death, how to value that interest. ( Mille Lacs County )

### **STATUTES, REGULATIONS, BULLETINS**

**DARLENE LUTHER REVISED ANATOMICAL GIFTS ACT, Laws 2007, Ch. 120.**

This revised Uniform Act was adopted by the 2007 session of the Minnesota State Legislature with an effective date delayed to April 1, 2008, to allow the Bar Association to study the terms of the Act. A joint committee of representatives from the MSBA Probate and Trust, Elder Law, and Health Law Sections reviewed the Act this summer. The joint committee proposed that the Probate and Trust Section take the lead in requesting technical amendments to the Act.

**Here is the link to a draft of the corrected bill and a summary of the proposed corrections:**

<http://www2.mnbar.org/sections/elder-law/WhatsNew.asp>

## **ELDER LAW WEBSITE**

Don't forget that the Elder Law Website is a great resource. Here's what you can find on the Website: Links under "What's New" to the DHS Health Care Programs Manual, the updated Income and Asset Eligibility Figures for Minnesota Health Care Programs, the DHS Bulletin on treatment of uncompensated transfers, the Minnesota Bankers Association Compliance Bulletin on Powers of Attorney, and a legislative summary; Practice Links to organizations such as NAELA, ABA Commission on Law and Aging, Minnesota Senior Federation; 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 eNewsletter contributions by noon on Saturday of each week to

Vicki McIntyre at [vmcintyre2@yahoo.com](mailto:vmcintyre2@yahoo.com)

If you do not wish to receive this eNewsletter, send your request to be removed from the mailing list to Meaghan Harper at [mharper@mnbar.org](mailto:mharper@mnbar.org)