

MSBA ELDER LAW SECTION E-NEWSLETTER SEPTEMBER 23, 2008

E-Newsletter Editorial Staff:

Newsletter Committee Chair: Laurie Hanson, Esq.

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COMMITTEE SPOTLIGHT: MEDICAL ASSISTANCE COMMITTEE

The purpose of the Medical Assistance Committee is to help practitioners respond to Medical Assistance issues arising in practice and to share information about developing laws and policies. Private attorneys who are members of the Elder Law Section of the MSBA are eligible for membership. Committee chair for 2008-09 is Cathryn D. Reher of Long, Reher & Hanson, P.A. The committee meets at 3:30 p.m. on the third Tuesday of every other month at the MAO offices, located at 2021 E. Hennepin, Suite 200, in Minneapolis. Out-of-state members may participate by phone. Members interested in joining the committee or attending by phone may contact Tracie Fenske with Long, Reher & Hanson, P.A., at 952-929-0622.

ABA SOLICITS STORIES ABOUT MULTI-STATE GUARDIANSHIP PROBLEMS

The American Bar Association Commission on Law and Aging is looking for stories about how multi-state guardianship problems affect the lives of vulnerable individuals and their families, especially stories involving elder or adult abuse. Because adult guardianships often involve more than one state, lack of clear jurisdictional guideposts can facilitate abusive actions. To address a variety of problems, the Uniform Law Commission in 2007 approved the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA.) The UAGPPJA seeks to clarify jurisdiction and provide a procedural roadmap for addressing dilemmas where more than one state is involved. Plans are underway to introduce UAGPPJA legislation in Minnesota. Stories about how multi-state guardianship problems affect the lives of vulnerable individuals and their families in Minnesota will be helpful in supporting the proposed legislation.

Stories may be submitted to the ABA Commission at:

guardianshipjurisdiction@staff.abanet.org

NEW TODD FORMS AVAILABLE

The Minnesota Department of Commerce has posted Uniform Conveyancing Blanks (UCBs) to comply with the new Transfer on Death Deed (TODD) legislation. The new forms are available in fillable PDF at practicelaw and mndocs on the MSBA's document

assembly Website. The forms are also posted in a non-fillable format at the Department of Commerce site.

Questions about the forms may be directed to Nancy Hupp, one of practicelaw's attorney editors, at: nhupp@mnbar.org

IRIS C. FREEMAN APPOINTED TO FACULTY OF WILLIAM MITCHELL COLLEGE OF LAW

The Center for Elder Justice and Policy is pleased to announce the appointment of Iris C. Freeman as Adjunct Professor at William Mitchell College of Law. During the fall of 2008, Professor Freeman will coordinate work between the Center and the Vulnerable Adults Act community stakeholder group led by the ElderCare Rights Alliance. Professor Freeman will also co-teach the Elder Justice and Policy Keystone, an elder-justice focused policy clinic and seminar that develops students' competencies in policy practice and deepens their understanding of the legislative process and policy implementation.

Professor Freeman is a Public Policy Consultant with Advocacy Strategy in Minneapolis, representing senior, professional, and labor organizations. She also teaches classes in Community Practice, Advanced Community Organizing and Advocacy at the University of Minnesota Graduate School of Social Work, where she was honored as Alumni of the Year in 2002. She has directed the Advocacy Center for Long-term Care for over 20 years and was Director of Public Policy at the Alzheimer's Association, Minnesota-Dakotas Chapter. She is widely published in professional journals and serves on numerous boards and advisory committees, including two terms on the Board of Directors of the National Committee for the Prevention of Elder Abuse.

For further information, contact Professor Kim Dayton at: kim.dayton@wmitchell.edu

ELDER LAW NEWS

We're aging, but our long-care system isn't keeping pace.

<http://www.startribune.com/opinion/commentary/28625154.html?elr=KArksc8P: Pc: UthPacyPE7iUiD3aPc: Yyc:aUU>

Franken and Coleman on Medicare.

<http://kaaltv.com/article/stories/S580953.shtml?cat=10226>

Helping seniors make informed choices.

<http://www.perhameb.com/articles/index.cfm?id=9978>

Health insurance for some working Minnesotans could be in jeopardy after the federal government threatened to pull millions of dollars in funding.

<http://wcco.com/health/minnesota.care.funding.2.819789.html>

Genworth Financial launches partnership long-term care insurance products in Minnesota.

http://money.cnn.com/news/newsfeeds/articles/prnewswire/200809150901PR_NEWS_USPR_NEM017.htm

Assisted living week: state ombudsman listens to local residents firsthand.

<http://www.crookstonimes.com/articles/2008/09/12/news/29news3.txt>

UPCOMING EVENTS AND CLE PROGRAMS

Estate Planning for Retirement Benefits

Presented by Minnesota CLE

Tuesday, September 23, 2008

Minnesota CLE Conference Center, 3rd floor City Center, Minneapolis

Application has been made for 6.0 CLE credits

More information and registration is available under "Seminars" at: www.minncle.org

Change in the Context of End of Life Care: Past, Present, and Future

Presented by Professor Kathryn Tucker, Affiliate Professor, Lewis & Clark College of Law and Director of Legal Affairs, Compassion in Choices

Co-sponsored by the student Elder Law and Estate Planning Society, William Mitchell College of Law

Wednesday, September 24, 2008 - Noon - 1:30 p.m.

William Mitchell College of Law Auditorium, St. Paul

Application has been made for 1.0 CLE Credit

Admission is free. No registration required.

Home and Community-based Medical Assistance in Minnesota

Presented by Jeffrey W. Schmidt in conjunction with Medical Education Services, Inc.

Professional Development Network

Thursday, September 25, 2008 - 9:00 a.m. - 4:30 p.m.

Radisson Suites, 404 West St. Germain, St. Cloud

5.25 CLE credits have been approved by the Minnesota Board of Continuing Education

Information and online registration is available at: www.meds-pdn.com

The New Transfer on Death Deed (TODD) Legislation

Presented by Julian Zweber and Minnesota CLE Faculty

Tuesday, October 14, 2008 - 9:00 a.m. - 12:15 p.m.

Minnesota CLE Conference Center, 3rd floor City Center, Minneapolis

Application has been made for 3.0 CLE credits and 3.0 Advanced Real Estate

Specialist credits

More information and online registration is available at:

<http://www.minncle.org/AABuy1.asp?ITEMTYPE=S&ITEMNMBR=101850901&ArticleID=> or call 800-759-8840.

8th Annual National Aging and Law Conference - Setting the Agenda: Advocating for Elders After the Election

Sponsored by the AARP Foundation, the American Bar Association Commission on Law and Aging, National Senior Citizens Law Center, The Center for Social Gerontology, Center for Medicare Advocacy, Inc., NAELA, National Consumer Law Center, and the National Association of State Units on Aging

Wednesday through Saturday, December 3-6, 2008

Doubletree Hotel, Arlington, Virginia

More information and registration is available at: www.aarp.org/nltp

ELDER LAW SECTION ACTIVITIES

THE 2008 ELDER LAW INSTITUTE: PROTECTING VULNERABLE CLIENTS IN TOUGH ECONOMIC TIMES. This year's Elder Law Institute will be held on Thursday and Friday, October 2-3, 2008, at the Minnesota CLE Conference Center, 3rd floor City Center, Minneapolis.

- **SPECIAL FEATURE: WHAT'S AN ELDER TO DO? PRIVATE EFFORTS TO RECOVER ASSETS.** Learn how elders can fight back when they are victims of financial exploitation. This presentation discusses the practical challenges to successfully recovering against financial exploiters. The speakers will review causes of action that elders can pursue, remedies available, opportunities and challenges in seeking judgment, and ways and means of collecting. Presenters are Nicholas E. Halbur and Jennifer L. Wright of the University of St. Thomas Law School. Don't miss this practical and useful session on Thursday, October 2, 2008, at 10:45 a.m.!
- **CLE CREDITS:** Application has been made for 10.25 CLE credits, including 1.0 Ethics credit.
- **REGISTER TODAY.** More information and registration is available by phone at 651-227-8266 or 800-759-8840, or online at: <http://www.minncle.org/AABuy1.asp?ITEMTYPE=S&ITEMNMBR=100540901&ArticleID=>

GOVERNING COUNCIL MEETING. The next meeting of the Elder Law Section Governing Council will be at 3:30 p.m. on Friday, October 10, 2008, at the MAO offices, 2021 E. Hennepin, Suite 200, Minneapolis. All members are welcome to attend. To participate by phone, contact Karla Nelson with Schmitz & Schmidt, P.A., at 651-291-2405.

MEDICAL ASSISTANCE COMMITTEE MEETING. The next Medical Assistance Committee meeting will be at 3:30 p.m. on Tuesday, October 21, 2008, at the MAO offices, 2021 E. Hennepin, Suite 200, Minneapolis. If there are specific MA topics you would like to discuss at the meeting, please email Chair Cathryn Reher at creher@mnelderlaw.com or fax materials 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.

LEGISLATIVE COMMITTEE MEETING. The next Legislative Committee meeting will be at noon on Wednesday, November 19, 2008, at the offices of Garvey and Boggio, P.A., 9995 Lyndale Avenue South, Bloomington. Section members are welcome to attend. Please RSVP by November 18, 2008, to Peter Hendricks at 952-881-4996 or phendricks@gblawoffice.com.

MINNESOTA CASES

Following are three unpublished Minnesota Court of Appeals opinions released on Tuesday, September 16, 2008.

A07-1715

In re: Estate of Mary Victorine Carpentier Torgersen, a/k/a Mary V. Torgersen, Decedent.

HUSPENI, Judge

In this appeal from the district court's award of attorney fees to respondent, appellant argues that the district court's findings are erroneous and insufficient and that the award was unreasonable as a matter of law. We affirm.

The case is available at: <http://www.mncourts.gov/opinions/coa/current/opa071715-0916.pdf>

A07-1848

In re the Guardianship and/or Conservatorship of Millicent S. Ficken .

HALBROOKS, Judge

In this conservatorship proceeding, appellant challenges the district court's conclusion that it had subject-matter jurisdiction to impose a conservatorship under Minn. Stat. § 524.5-106 (2006), contending that the district court erroneously construed the statute to apply to her and her property even though she is domiciled in Wisconsin and has no property to speak of within Minnesota. Because we conclude that Minn. Stat. § 524.5106 does not provide the district court with jurisdiction over appellant's conservatorship proceeding, we reverse.

The case is available at: <http://www.mncourts.gov/opinions/coa/current/opa071848-0916.pdf>

A08-0048

Tammy Sue Holl, Appellant, vs. Itasca County Health and Human Services, Respondent, Minnesota Department of Human Services, Respondent.

TOUSSAINT, Chief Judge

Appellant Tammy Sue Holl challenges the decision by respondent Minnesota Department of Human Services (the commissioner) to deny her medical-assistance coverage for a residential treatment program for nicotine dependence, in an appeal from an adverse decision by the district court. Respondent Itasca County Health and Human Services did not file a brief but joins in the brief submitted by the commissioner. Because substantial evidence supports the decision by the commissioner and because Holl cannot prevail on her constitutional claims, we affirm.

The case is available at: <http://www.mncourts.gov/opinions/coa/current/opa080048-0916.pdf>

Unpublished opinions may not be cited except as provided by Minn. Stat. Section 480A.08, subd. 3 (2006).

STATUTES, REGULATIONS, BULLETINS

DHS BULLETIN #08-21-09: REVISED CRITERIA FOR HOME MAINTENANCE NEEDS ALLOWANCE DEDUCTION IN MEDICAL ASSISTANCE LONG-TERM CARE FACILITY INCOME CALCULATION. This bulletin, dated September 15, 2008, provides policy information and instructions for implementing the revised criteria for the deduction of a home maintenance needs allowance from the income of a person residing in a long-term care facility. The complete bulletin is available at:
http://www.dhs.state.mn.us/main/groups/publications/documents/pub/dhs16_142478.pdf

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>

Please send eNewsletter contributions by noon on Saturday of each week to Vicki McIntyre at vmcintyre2@yahoo.com.

If you do not wish to receive this eNewsletter, send your request to be removed from the mailing list to Kim Basting at kbasting@statebar.gen.mn.us