

MSBA ELDER LAW SECTION E-NEWSLETTER
April 2, 2018

Vol. 9, No. 40

E-Newsletter Editorial Staff:

Communications Committee Chair: Rachel Schromen

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NEWSLETTER HIGHLIGHTS

SSA Seeks Input on Representative Payee Determinations for Beneficiaries:

As part of the upcoming [National Disability Forum](#), the Social Security Administration is exploring options to improve its instructions for the Representative Payment Program. Your input is needed on how the SSA can identify beneficiaries who can direct the management of their own benefits.

Your input is welcome via the SSA [IdeaScale](#) tool through Friday, April 6, 2018. Questions may be directed to Joie.Hill@ssa.gov.

Drafting Advance Planning Documents to Reduce the Risk of Abuse or Exploitation:

Join presenter David Godfrey, Senior Attorney with the ABA Commission on Law and Aging for a webcast discussing ways to assist clients in selecting lower-risk agents, tools to document and communicate health care values, and tips on drafting documents to reduce the risk of exploitation.

This presentation will take place via Webcast on **Wednesday, April 18 at 1:00 p.m.**

Registration is available [here](#).

Elder Law 101 – Disability Planning with Health Care Directives CLE:

Join the Elder Law Section for a series of Elder Law 101 CLEs! Our first presentation is sponsored by the New Lawyers Committee and the Law Student Committee.

Health Care Directives (in the past, they have been called "Living Wills," "Health Care Declarations," "Durable Powers of Attorney for Health Care," and others) are an important tool in estate planning and health care. These documents allow someone to designate another person to make health care decisions for them when they are unable to do so. This course will cover the basics that any attorney should know before drafting Health Care Directives.

12:00 p.m. to 1:00 p.m. at the **MSBA Offices.**

Presented by:

Jack Austin, Hawke Law Group

Jessica Swanson, University of Minnesota

Brianna Tretter, St. Thomas School of Law

Registration and more information available [here](#). Registration deadline is April 17, 2018. On-site registration will begin at 11:30 a.m. on April 19. Bring your own lunch. Beverages provided.

Elder Law Section members can attend for **free**. Non-section members: \$15 or join the section for \$25 and attend for **free**. Contact Tram Nguyen at 612-278-6316 to register under this option. Non-MSBA members: \$30. Law Student: **free**.

Submitted by: Jack Austin

Medical Assistance How-To's for the Elderly Client CLE:

The Elder Law Section of the MSBA invites you to participate in a practical, fundamentals seminar focused on Medical Assistance planning for your aging clients presented by Minnesota Continuing Legal Education.

Please join us for Medical Assistance How-To's for the Elderly Client on **April 24, 2018** at the **Minnesota CLE Conference Center** from **9:00 a.m. to 4:45 p.m.**

Attendees will be able to learn about counseling clients through all aspects of planning for long-term care, including estate planning considerations, housing options, planning for Medical Assistance eligibility, asset preservation techniques, the use of Medicaid-compliant annuities, the filing and approval of Medical Assistance applications, and estate recovery after the client's death. The seminar is formatted so attendees can apply the legal techniques to a hypothetical fact pattern while earning over 6 CLE credits. MSBA members will receive a discount for tuition.

Registration and more information is available [here](#).

Submitted by: Brenna Galvin

Emerging Issues in Assisted Living and Nursing Homes CLE:

Thursday, April 26, 2018 at 8:30 a.m. to 11:30 a.m. at Town and Country Club.

Registration available [here](#). Registration deadline is April 20, 2018.

The number of older and vulnerable adults in need of long-term care is on the rise. In 2010, those age 65+ represented 12.9% percentage of the population in Minnesota compared to an expected peak of 21.2% in 2030. In response, assisted living and other senior communities are being built in record numbers. The current public health concerns associated with these communities providing long-term care services include quality of care, regulation, injuries, acceptance of medical assistance. Minnesota is the only state that does not license assisted living or similar residential settings to allow greater clarity and oversight for residents. Reports of maltreatment received by the Office of Health Facility Complaints at the Minnesota Department of Health have risen by over 600% with 3,608 received in 2010 compared to 24,210 in 2016. The rise in aging persons in need of long term care, the explosion of development of new assisted living communities, and lack of regulation has resulted in an emerging public health crisis.

Elder law attorneys, advocates, state agencies, providers, and professionals will need to work together to address the current concerns.

Client scenarios that are presented to Elder Law attorneys are a mixture of care, finance, decision-making authority, and rights discussions, to name a few. The issues are intertwined, and it can be difficult to determine where and how best to advocate. How can Elder Law attorneys address the global presentation of concerns? How can they issue spot legal claims of injury? How can they properly navigate medical assistance? What are the trends and issues facing consumers? What may occur on the legislative front to help older and vulnerable adults receiving long-term care?

This CLE sponsored by the MSBA Elder Law Section will address these questions and others to help elder law attorneys and professionals navigate legal concerns on behalf of older and vulnerable adults. Moderated with questions by Suzanne Scheller, Esq., a panel of four professionals will each present on emerging issues in their area of knowledge, followed by questions from the moderator. The topics discussed include abuse and medical malpractice claims, tips and trends from the Ombudsman for Long-Term Care, pitfalls in medical assistance planning, termination of lease and/or services in assisted living, and legislative proposals and consumer advocacy at the Capitol.

Registration and breakfast will begin at 8:00 a.m. Breakfast buffet will include muffins, fruit, eggs, bacon, sausage, hashed browns, sweet rolls, coffee, tea, and orange juice.

Moderator:

Suzanne Scheller, Esq.

Attorney, Scheller Legal Solutions, LLC and Member, Governor's Consumer Work Group on Elder Abuse

Presenters:

Genevieve Gaboriault, Esq.

Managing Attorney, Senior Law Project, Mid-Minnesota Legal Aid and Member, Governor's Consumer Work Group on Elder Abuse

Cathryn Reher, Esq.

Attorney, Long, Reher, Hanson and Price PA

Joel Smith, Esq.
Attorney, Kosieradzki Smith Law Firm

Cheryl Hennen
State Long-Term Care Ombudsman at the Office of the Ombudsman for Long-Term Care

CLE Credits:

3.0 Standard CLE Credits (application pending) | Event Code: 255340

Cost:

Section Member: \$5.00

Non-Section Member: \$30.00

Join the Section and attend this CLE for Free: \$25.00

MSBA members who are not members of the Elder Law Section can join the Section and attend this CLE for Free. Must call Tram Nguyen at 612-278-6316 to register under this option.

Non-MSBA Member: \$50.00

Law Student: Free

Elder Law Section to Sponsor Upcoming MSBA Convention:

The 2018 Minnesota State Bar Association Convention will take place on Thursday, June 28 and Friday, June 29 at Mystic Lake Center in Prior Lake, Minnesota. The Elder Law Section will be co-sponsoring this event. Elder Law section members can attend the convention for only \$45!

Convention registration is [available here](#). Information on how to register at the discounted price can be found [here](#).

EVENTS SCHEDULED IN THE NEXT MONTH

April 9, 2018 at 3:30 p.m. – Law Student Committee (University of Minnesota Law School, Minneapolis)

April 17, 2018 at 3:30 p.m. – Medical Assistance Committee (Monroe Village, Minneapolis)

April 20, 2018 at 3:30 p.m. – Governing Council (Monroe Village, Minneapolis)

ELDER LAW NEWS

[Law Enforcement Conducts Largest Coordinated Elder Identity Fraud Sweep in History](#)

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

QUESTIONS AND ANSWERS FROM THE MSBA COMMUNITIES

Q: I received a call from a person today, regarding his in-laws. In September of 2014, his in-laws moved to assisted living and gave their home to their three daughters. The value of the gift was \$65,000. They have spent down and have about \$10,000 in cash accounts and each have a funeral policy. They will each be under \$3000 after they pay the February Bills.

There is about a year and 1/2 remaining on the 60 month look back and their gift ineligibility period would be 9.5 months.

Is it better for them to apply for benefits and be denied because of gifting and then have the daughters gift back to pay for care during the ineligibility period? Or should the daughters gift back and have their parents spend down and then apply? Either way, the daughters would need to gift the whole amount back. Are there any benefits to making the application early?

A: It's all about the numbers. Keep in mind that assets up to \$126,600 can be protected for a community spouse. A community spouse is a spouse who does not apply for EW. Part of the strategy here might be to apply for only one spouse while keeping the other spouse completely private-pay. There is no general advice that would apply in this situation.

Submitted by: Julian Zweber

ELDER LAW CASES

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:

The Advocacy Support Committee meets at the offices of Long, Reher, Hanson & Price. Telephone participation is available. Please contact committee chair Laura Zdychnec at lzdychnec@mnelderlaw.com for call-in instructions or more information.

Upcoming meeting dates to be announced.

PRO BONO COMMITTEE:

Meetings will be held via teleconference on the third Friday of every other month from 12-1 pm unless otherwise communicated. Upcoming meeting dates:

May 18, 2018 at 12 p.m.

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

COMMUNICATIONS COMMITTEE:

The Communications Committee oversees the monthly Elder Law E-Newsletter and the Elder Law Section website. The committee 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:

May 9, 2018 at 8:30 a.m.

July 11, 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.

EDUCATION COMMITTEE:

Meetings are held via conference call. Please contact Genevieve Gaboriault at gegaboriault@mylegalaid.org to participate.

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.

Upcoming meeting dates:

April 9, 2018 at 3:30 p.m. at the University of Minnesota 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.

Upcoming meeting dates:

April 17, 2018 at 3:30 p.m.

June 26, 2018 at 3:30 p.m.

August 21, 2018 at 3:30 p.m.

October 16, 2018 at 3:30 p.m.

December 18, 2018 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 Boes Legal, PLLC, at tsherman@plutoboeslegal.com or 507-247-5900 at least 24 hours in advance of the meeting. Topics for the meeting may be submitted to tsherman@plutoboeslegal.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.

MA Committee members are invited to join the Medical Assistance Community forum at my.mnbar.org. Please contact Tram Nguyen at tnguyen@statebar.gen.mn.us to be added to the community.

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 will 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.

STRATEGIC PLANNING COMMITTEE:

The next Strategic Planning Committee meeting date is to be announced. Meetings are 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.

GOVERNING COUNCIL:

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

- April 20, 2018 at 3:30 p.m.**
- June 15, 2018 at 3:30 p.m.**

Meetings will be held at the 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.

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](#).