

**MSBA ELDER LAW SECTION E-NEWSLETTER**

February 3, 2020

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E-Newsletter Editorial Staff:

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**E-NEWSLETTER HIGHLIGHTS**

**Video Camera in a Nursing Home Room**

Recently, a question came on the list serv for the Estate Planning and Probate Section: "Can you have a video camera in a nursing home room?"

The answer is Yes, with caveats.

In fact, Minnesota has recently enacted new law addressing this topic. As part of the 2019 Eldercare and Vulnerable Adult Protection Act of 2019 (Minn. Stat. 144G), a section was all added to Minn. Stat. 144 about electronic monitoring.

Under the provisions of Minn. Stat. [144.6502](#), a facility resident or that resident's legal representative if incapacitated, may install a video camera in said resident's room. However, the resident, or the resident's representative, must provide a written consent to installation of the equipment. If the consenting party is a resident's representative, the statute sets forth additional requirements for the consent to be active. If a room is shared, both residents in the room must provide written consent.

The resident or representative must give the facility notice of the consent to monitoring before the equipment may be installed, in the form of a copy of the signed form. however, there is one exception to this rule: If the resident fears retaliation by the facility due to the placement, notice can be made on the Office of Ombudsman for Long-Term Care, who will hold the notice for 14 days before forwarding on to the facility. This time period is intended to allow the resident to gather enough electronic evidence to make a Minnesota Adult Abuse Reporting Center report or police report, or both, upon evidence from the electronic monitoring device that suspected maltreatment has occurred.

Resource links:

<https://www.revisor.mn.gov/statutes/cite/144.6502>

<http://www.mnaging.org/Advocate/OLTC.aspx>

Contributed by Kelly Springer.

**No Penalty Period for Funding a Pooled Special Needs Trust After Age 65; Pfooser v Harpstead (Minn. Ct. App., No. 19HA-CV-18-3466, Jan. 13, 2020).**

For those of us who labor in the vineyards of Medical Assistance practice, the Minnesota Court of Appeals issued an important decision on January 13, 2020, regarding the possibility of funding pooled Special Needs Trusts after the beneficiary reaches age 65. In affirming the Dakota County District Court's decision reversing the Commissioner's imposition of a penalty period for funding the trust, the Court of Appeals placed its reliance on actual federal statutes, rules and policy guidance and on the evidence provided by the appellant supporting the finding that the appellant transferred funds for fair market value or other valuable consideration. This is the first reported case in Minnesota that considered intention to receive "other valuable consideration" as an additional exception to the receipt of "fair market value" exception to uncompensated transfer penalty rules that DHS has followed since 1993.

**[A19-0853](#)     *Robert Pfooser, as special administrator of the Estate of David Pfooser, Respondent, vs. Jodi Harpstead, Commissioner Minnesota Department of Human Services, Appellant, and Dakota County Human Services, Respondent Below.***

Available at the Minnesota Appellate Courts Case Management System (login required):  
<http://macsnc.courts.state.mn.us/ctrack/publicLogin.jsp>

Contributed by Julian J. Zweber.

Please submit news articles of interest to [mardell@mardellpreslerlaw.com](mailto:mardell@mardellpreslerlaw.com).

## **FEBRUARY CLE**

### **The View from the Bench**

Thursday, February 13, 2020 from 12:00 PM to 1:00 PM at Conference Center Training Room / First National Bank Building Saint Paul.

Hear from Referee Olson about recent initiatives at the court and tips for appearing in Ramsey County Probate Court.

Presenter: Hon. Joel Olson | Probate Court Referee, Ramsey County District Court

Click here to register: <https://www.mnbar.org/members/cle-events/event?EventID=3583>.

## **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](mailto:lzdychnec@mnelderlaw.com) for call-in instructions or more information.

Upcoming meeting dates to be announced.

### **AWARDS COMMITTEE:**

The Awards Committee Chair is appointed by the incoming Council Chair after the Council Chair takes office each year. The current Committee Chair is Julian J. Zweber. Members of the Committee are appointed each year by the Council Chair on recommendation by the Committee Chair as approved or modified by the Council Chair. The Committee usually meets from July to October of each year, at the call of the Committee Chair. The Committee solicits nominations from Section members for Section Awards and determines what Awards should be presented at the next Elder Law Institute sponsored by MN CLE, usually in October of each year. For more information, please contact Julian J. Zweber at 651-646-4354 or [julianzweber@qwestoffice.net](mailto:julianzweber@qwestoffice.net).

### **COMMUNICATIONS COMMITTEE:**

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

**February 12<sup>th</sup>, 2020 at 9:00 a.m.**

**April 8<sup>th</sup>, 2020 at 9:00 a.m.**

**June 10<sup>th</sup>, 2020 at 9:00 a.m.**

**August 12<sup>th</sup>, 2020 at 9:00 a.m.**

The meeting location is Julian's Office at 1360 Energy Park Drive, Saint Paul, MN 55108 in the First Floor Conference Room. If you're not able to attend in person, please contact Mardell Presler or Tram Nguyen to request a conference call in number, [mardell@mardellpreslerlaw.com](mailto:mardell@mardellpreslerlaw.com) or [tnghuyen@mnbars.org](mailto:tnghuyen@mnbars.org).

Anyone interested in serving on the committee or suggesting ideas for the newsletter or website may contact Communications Committee chair Mardell Presler to [mardell@mardellpreslerlaw.com](mailto:mardell@mardellpreslerlaw.com) or 763-360-7833.

#### DIVERSITY COMMITTEE:

Meetings will be held via teleconference on the second Tuesday of every month from 9:30-10:15 am.

Please contact Maya Missaghi at [maya@mmlawservices.com](mailto:maya@mmlawservices.com) if you would like to join!

#### EDUCATION COMMITTEE:

The Education Committee plans CLE seminars sponsored by the Elder Law Section and meets by telephone on the second Thursday of each month from 9:30 A.M. to 10:30 A.M.

If you would like to participate, please contact the committee chair, Laura Orr at [laura.orr@smrls.org](mailto:laura.orr@smrls.org).

#### 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.

If you have questions about the committee, contact Jack Austin at [jack@hawkelawgroup.com](mailto:jack@hawkelawgroup.com).

#### LEGISLATIVE COMMITTEE

The Elder Law Section's Legislative Committee monitors proposed legislation at the state and federal level affecting the Section's membership; reviews legislative proposals put forward by other Sections and Committees of the MSBA; reviews proposals from other groups, agencies and individuals; keeps Section membership informed of proposed legislation; provides comment and other responses to legislative proposals; makes recommendations concerning support of, or opposition to, legislative proposals; develops relationships with other organizations affected by legislation of interest to the Section; acts as a coordinator for the Section's legislative activities; develops legislative proposals for inclusion in the MSBA legislative agenda; provides witnesses and testimony in support of, or opposition to, legislative proposals; and in general supports the MSBA and the Section's legislative agendas. Members interested in joining the committee or learning more about the legislative issues being reviewed by the committee may contact the Legislative Committee Chair, Suzy Scheller, at (763) 647-0042 or [suzy@schellerlegalsolutions.com](mailto:suzy@schellerlegalsolutions.com); or Vice-Chair, Julian J. Zweber, at (651) 646-4354 or [julianzweber@qwestoffice.net](mailto:julianzweber@qwestoffice.net).

Please contact Tram Nguyen at [tnguyen@mnbars.org](mailto:tnguyen@mnbars.org) to be added to the Elder Law Section Community Forum.

#### MEDICAL ASSISTANCE COMMITTEE:

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@plutoboesModule.com](mailto:tsherman@plutoboesModule.com) or 507-247-5900 at least 24 hours in advance of the meeting. Topics for the meeting may be submitted to [tsherman@plutoboesModule.com](mailto:tsherman@plutoboesModule.com) under the subject heading "MA Committee Topic," or faxed to 507-247-5868.

The Medical Assistance (MA) Committee meetings will be at 3:30 p.m. on the third Tuesday of even-numbered months. 2020 are tentatively scheduled for the following dates:

**February 18, 2020 at 3:30**

**April 21, 2020 at 3:30**

**June 23, 2020 at 3:30**

**August 18, 2020 at 3:30**

**October 20, 2020 at 3:30**

**December 15, 2020 at 3:30**

To attend by telephone, call 1-800-226-9607 at the designated meeting time. When prompted, enter Conference Identification Number [or Participant Code] 8157976029# to be connected to the conference.

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](http://my.mnbar.org). Please contact Tram Nguyen at [tnguyen@mnbars.org](mailto:tnguyen@mnbars.org) 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.

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

PRO BONO COMMITTEE:

The Pro Bono Committee, due to lack of attendance, is suspending committee meetings until further notice. Please contact Jennifer Wright, Chair, at [jlinderwright@gmail.com](mailto:jlinderwright@gmail.com), if you have an interest in working with the Pro Bono Committee.

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](mailto:bgalvin@maserlaw.com).

VULNERABLE ADULT COMMITTEE:

Contact Marit Peterson at [marit.peterson@elderjusticemn.org](mailto: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](mailto: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 Mardell Presler at [mardell@mardellpreslerlaw.com](mailto:mardell@mardellpreslerlaw.com). The E-Newsletter is distributed on the first Monday of each month. If the first Monday occurs on a holiday, the E-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@mnbars.org](mailto:tnguyen@mnbars.org).

Current and prior E-Newsletters are posted on the website for the MSBA Elder Law Section and are available [HERE](#).