

MSBA ELDER LAW SECTION E-NEWSLETTER

January 7, 2019

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E-Newsletter Editorial Staff:

Communications Committee Chair: Rachel Schromen

Editor in Chief: Mardell Presler

Web Editor: Bridget-Michaele Reischl

Contributors: Laura Zdychnec

JANUARY EVENTS

Upcoming CLE:

Foreign Inheritance - the Pandora's Box of U.S. International Tax Reporting Requirements

January 17, 2019, 12:00 PM to 1:30 PM, MSBA Minneapolis, Glacial Lakes Room. Participation by webcast available.

Register here: [Foreign Inheritance International Tax Reporting](#)

Elder Law Estate Planning Basics

January 31, 2019, 12:00 PM to 1:30 PM, MSBA Minneapolis, Glacial Lakes Room. Participation by webcast available.

Register here: [Elder Law Estate Planning Basics](#)

ELDER LAW NEWS

**Update on DHS' Treatment of Non-Homestead Life Estates and Intervention by MN NAELA
Chapter: Laura Zdychnec**

Sometime in 2010, the Department of Human Services ("DHS") distributed what has become known as the "Life Estate Memo" to county social services agencies. The undated and unsigned Memo postulates that a non-homestead life estate held by a community spouse must be counted against his or her community spouse resource allowance ("CSRA"), but will not be counted if held by the institutionalized spouse. Because the Memo provides for differing treatment depending on which spouse owns the life estate, it also states that married couples must identify which of their combined resources will make up the CSRA before an eligibility determination is made.

In 2013, Minnesota's 9th Judicial District Court, acting as an appellate court, found DHS' policy arbitrary and capricious and contrary to state and federal law. *Larson v. Minnesota Department of Human Services*,

et al., No. 60-CV-13-465 (Polk County, 9th Dist., 2013). Despite this outcome on appeal, DHS continued to impose the policy in other counties.

In December 2014, following an administrative hearing out of Renville County, the Human Services Judge agreed that the state may not treat a life estate as countable when held by a community spouse when it would not be counted if held by an institutionalized spouse. In re: Appeal of Vait, Docket #155286. In January 2015, Renville County requested reconsideration, arguing inter alia, that the Larson decision was not binding on the state. On April 3, 2015, the Director of DHS' Appeals Division denied the request for reconsideration, concluding that the issue was addressed in Larson under nearly identical facts, and that the statutory analysis was sound.

Yet another case arose in Renville County in 2018 on the application for Medical Assistance by Esther Schmalz. Esther and her husband, Marvin, jointly hold a variety of life estate interests in family farm property. Renville County denied Esther's eligibility for Medical Assistance based on Marvin's retention of his joint life estates, and Esther appealed. The Human Services Judge, with virtually no analysis and no reference to the prior adjudications, affirmed the denial of benefits.

Ms. Schmalz appealed to the Renville County District Court, and the decision issued on November 29, 2018. The Minnesota Chapter of the National Academy of Elder Law Attorneys intervened as amicus, and participated in briefing and oral argument.

In the [decision](#), Judge Slieter reversed the denial of Esther's eligibility, concluding that disparate treatment of the life estates depending on which spouse holds title is an error of law. The Court also expressed concern about the continuing enforcement of the policies put forth in the Life Estate Memo, and expressed hope that the Commissioner would review its manual of instructions accordingly.

The information above was shared with the Elder Law Section's Governing Council on December 21, 2018. More recently, however, the Commissioner of Human Services has filed a Notice of Appeal to the Minnesota Court of Appeals. We will provide further updates as they become available. If you have a similar set of circumstances, or need further information, please contact Laura Zdychnec at lzdychnec@mnelderlaw.com.

Review Decision: [65-CV-18-157 Schmalz vs. MN Dept of Human Services - Order for Judgment Reversing Denial of Benefits](#)

Submitted by: Laura Zdychnec.

Please submit news articles of interest to mardell@mardellpreslerlaw.com.

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:

The Pro Bono Committee meets on the third Friday of every other month at 3 pm at Estate and Elder Law Services, 1900 Central Ave. NE, Ste. 106, Conference Room, Minneapolis. Parking is available behind the building and along adjacent streets. Attendees should enter through the Estate and Elder Law Services door on Central Avenue by ringing the doorbell. Our next meeting will be:

January 18, 2019 at 3 p.m.

Questions may be directed to Jennifer Wright at jlinderwright@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 e-newsletter editor, web editor, 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:

January 9, 2019 at 8:30 a.m.

March 13, 2019 at 8:30 a.m.

May 8th, 2019 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.

DIVERSITY COMMITTEE:

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

Please contact Maya Missaghi at 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.

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.

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.

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.

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:

Friday, February 15, 2019 at 3:30 p.m.

Friday, April 26, 2019 at 3:30 p.m.

Friday, June 21, 2019 at 3:30 p.m. (The Governing Council meeting will take place immediately following the Section Annual Meeting 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 Mardell Presler at 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@mnbar.org.

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