

MSBA ELDER LAW SECTION E-NEWSLETTER
March 12, 2018

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E-Newsletter Editorial Staff:

Communications Committee Chair: Rachel Schromen

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NEWSLETTER HIGHLIGHTS

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](#).

Call for Nominations and Statements of Interest:

We need you! The Governing Council of the Elder Law Section of the Minnesota State Bar Association needs your energy, your perspective, and your commitment to high quality Elder Law in Minnesota. Nominations are open for two-year terms on the Governing Council and for one-year officer terms for President, Vice President, Secretary and Treasurer commencing on July 1, 2018. We are also accepting nominations for up to four (4) non-voting student members of the Governing Council. Please nominate yourself or others to fill these important positions. You may nominate yourself by submitting a short statement of interest.

Contact: Jeffrey W. Schmidt @ (651) 291-2405 or jschmidt@elderlaw123.com
Amber M. Hildebrandt @ 218-759-1673 or hildebrandt.esq@hotmail.com
Lori D. Skibbie @ (612) 676-6302 or lskibbie@voamn.org

Information about the roles of officers and the Governing Council is available in the section [bylaws](#). Written nominations will be accepted until April 1, 2018. A slate of nominees will be circulated to section members before the section's annual meeting on June 15, 2018. Nominations may also be made on the floor of the Annual Meeting.

Submitted by: Jeffrey Schmidt, jschmidt@elderlaw123.com

***The Nominating Committee is in the process of contacting all council members whose terms are ending to see if they want to continue on the Council. A list of Governing Council members can be found [here](#).

EVENTS SCHEDULED IN THE NEXT MONTH

March 14, 2018 at 8:30 a.m. – Communications Committee (Schromen Law, St. Paul)

March 16, 2018 at 12:00 p.m. – Pro Bono Committee (teleconference)

March 21, 2018 at 3:30 p.m. – Advocacy Support Committee (Long, Reher, Hanson & Price, Minneapolis)

ELDER LAW NEWS

[Victims Denounce a Failing State System for Responding to Reports of Elder Abuse](#)

The Office of the Legislative Auditor has released its [2018 evaluation of the Office of Health Facility Complaints](#).

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

QUESTIONS AND ANSWERS FROM THE MSBA COMMUNITIES

Q. Questions relating to estate recovery from small bank account balances remaining after a Medical Assistance recipient's death: The standard county correspondence and work sheet indicate that all balances must be paid to the county after funeral expenses.

Client resided in a nursing home and received MA benefits, she transferred to a hospital and died within 3-4 days. Client left a balance of several thousand dollars. Most of the funeral expenses were prepaid.

My understanding of state statues secs. 256B.15, subd1a(f) and 524.3-805 each indicate that the state's priority for recovery of assets is included in the fourth priority of categories as "an expenses of last illness"

Shouldn't the first three categories under sec. 524.3-805 and expenses of last illness take a priority over the county claim.

Specifically, do the following items have a priority over the county claim.

1. Fees and expenses of the client's attorney and agent.

2. Any additional funeral expenses.
3. Cost of final tax preparation to determine the amount, if any, of debts and taxes having preference under federal law.
4. Medical and attendant expenses for "last illness"
5. Are the remaining balances for the nursing home payments and final drug co-payment occurring prior to hospital admission considered expenses of last illness or a lower priority category of "expenses for care during the last year." sec. 524.3-805 (a) (4) & (5)

A. 1. The counties take the position that there are no expenses of administration unless a probate is started. If attorney fees and other expenses of administration are disputed by a county agency, I offer to start a probate. The county, of course, can dispute the claim for expenses.

2. Only "reasonable" funeral expenses take priority over the MA claim. Counties will dispute funeral expenses that the counties do not consider "reasonable." For example, in Ramsey County, they treat a funeral meal as a family expense not a funeral expense.

3. Debts and taxes with preference under federal law take priority, but I think the cost of preparing tax returns would be treated as an expense of administration. See #1 above.

4. Last illness is on the same level of priority as an MA claim. Last illness is treated narrowly. For example, dying in a hospital would be a last illness, but not the general cost of care provided in a nursing home prior to the trip to the hospital. Usually an MA claim will exhaust the decedent's probate assets long before you get to expenses for care in the last year of life. See #5 below.

5. I always discuss unpaid medical bills with the county collection unit before paying them. They become general unsecured claims (and lower priority than the MA claim) if not paid prior to the decedent's death. Usually the county by grace of God will allow you to pay unpaid medical bills. Technically they are lower priority than the MA claim but are often treated more generously. Unpaid attorney fees are treated as a general claim and have lower priority than the MA claim unless incurred as part of a probate. See #1 above. If you have unpaid attorney fees when the MA recipient dies, they are claims rather than expenses of administration and you either must collect them from the spouse or other family member or be SOL. I know at least one attorney who lost thousands of dollars in attorney fees and expenses because they were not paid prior to the decedent's death. You should have sufficient advance payment and a retainer agreement to clarify your right to payment and who pays if you are caught short by an MA client's untimely death.

A good source of information regarding DHS policies regarding estate recovery is the DHS Estate Recovery Manual available [here](#) or just search for "MN DHS Estate Recovery Manual."

See especially the section on Funeral Expenses. Some of the policy guidance seems very questionable to me and would probably fail if challenged. Litigating questionable DHS estate

recovery policy is, however, usually cost prohibitive unless substantial probate assets are involved.

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 will meet on **March 21, 2018 at 3:30 p.m.** 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.

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:

March 16, 2018 at 12 p.m.

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:

March 14, 2018 at 8:30 a.m.
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.

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](tel: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.