

MSBA ELDER LAW SECTION E-NEWSLETTER

July 8, 2019

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E-Newsletter Editorial Staff:

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E-NEWSLETTER HIGHLIGHTS

Call to Action from Marit Anne Peterson, Elder Law Section Chair



Greetings, and on behalf of the Elder Law Section Governing Council, welcome to another year! It's an extraordinary time to work in this area, as clients with diverse and often complex legal needs seek our services as dynamic, engaged and creative problem solvers and planners. We are asked to respond to a legal landscape that is in flux, and often unpredictable, using legal and strategic tools that range from "tried-and-true" to "shot-in-the-dark." The people I know who are engaged in the practice of elder law are among the most dedicated, passionate, adaptable and imaginative professionals I've met, and for that reason, I'm tremendously proud and grateful to serve as our section chair for the 2019/2020 year.

As elder law practitioners, we are lucky to have comprehensive support from our fellow members in a variety of ways. Our continuing education offerings and opportunities are robust, our newsletter is chock-full of interesting content, our listservs are active and responsive, and our

community is supportive and engaged. Thanks to the commitment of many of our fellow members, we have energy within our section directed toward increasing diversity and inclusion so the perspectives of all members and clients may be considered; and energy directed toward participation in pro bono activities that extend access to justice to older adults and families across our state in meaningful ways.

Nonetheless, your participation is needed in ongoing ways! If you've ever been curious about section governance, consider joining us at a governing council meeting (or consider joining the council itself). If you're interested in particular aspects of our practice, consider joining any of our committees (governing council participation is not required for committee service). If you have ideas for continuing education, pro bono activities, information sharing with law students, interest in the mentorship of attorneys new to the practice area, or thoughts about increasing the diversity of our membership: share them with us! We welcome the perspective of section members (or prospective members) and are constantly seeking to enhance the quality and utility of our offerings to our members and colleagues. Attend CLEs; jump in on our listservs; visit our meetings – we need you to build an MSBA Elder Law Section that is as vibrant and engaged as the practitioners that comprise its membership.

Please reach out to me with any ideas you may have – I look forward to connecting with many of you throughout the year, and welcome the chance to work collaboratively with you to continue the good work of the MSBA Elder Law Section!

Enthusiastically, Marit Anne Peterson

ELDER LAW NEWS

MSBA Elder Law Section Annual Report 2018-19

Section Membership

As of June 12, 2019, the Section has 469 members.

Financial Status

The Section had an account balance of \$19,816.48 as of April 30, 2019.

CLEs & Events

The Section hosted seven CLE programs in fiscal year 2018-19.

Program Title	Date	Event Code	CLE Credits	Number of Attendees
Emerging Issues in Long-Term Care	04/25/2019	271498	2.0 Standard 1.0 Elimination of Bias	66

Elder Law Basic - Understanding Veterans Benefits and How they Fit Into your Client's Plan	03/28/2019	270432	1.5 Standard	39
Tax Essentials for Elder Law Attorneys	02/28/2019	268025	1.5 Standard	65
Elder Law Estate Planning Basics	01/31/2019	267653	1.5 Standard	59
How to Have a More Dementia-Friendly Law Practice CLE - Practical Tips and Advice	12/13/2018	265729	1.5 Elimination of Bias	44
The Basics of Long Term Care Insurance AND the 2015 Legislative Changes	11/29/2018	265482	1.0 Standard	45
Medical Aid in Dying	09/27/2018	262412	1.5 Standard	56

Annual Meeting and Election Results

The Section's Annual Meeting was held on June 21, 2019, in the community room of Monroe Village, which is located at 1900 Central Avenue NE, Minneapolis, Minnesota 55418.

The following council members were elected to serve on the Section's Governing Council from 7/1/2019 to 6/30/2021:

Callyn Bedker
Saroi Brown
Lauren Fink
Brenna Galvin
Jean Gustafson
John Kantke
Mardell Presler
Jill Sauber
Jeffrey Schmidt
Joel Smith
Lucas Spaeth
Daniel Steinhagen
Laura Zdychnec
Julian Zweber

Law Student Representatives:

Traci Sherman
Colby Boman
Natasha Sinha

The following council members will continue council membership during the second year of their two-year terms, which end June 30, 2020:

Jack Austin

Mary Ebb

Amber M. Hildebrandt

Maya Missaghi

Laura Orr

Marit Peterson

Mary Frances Price

Cathryn Reher

Bridget Reischl

Suzanne Sandahl

Suzanne Scheller

Jennifer Wright

Ruthann Vos

Members Choosing to Leave the Council:

Genevieve Gaboriault

Adam Rohne

Rachel Schromen

Charissa Perzel Hall

The following officers were elected to serve on the Section's Governing Council from 7/1/2019 to 6/30/2020:

Chair – Marit Peterson

Vice Chair – Jack Austin

Secretary - Jennifer Wright

Treasurer - Jill Sauber

Diversity and Inclusion

The following summarize the accomplishments of the Elder Law Section in the areas of Diversity and Inclusion:

1. Helped plan and implement a successful National HealthCare Decisions Day in collaboration with Minnesota Elder Justice Center (MNEJC), Pro Bono and Law Students Committee.
2. Sponsored MSBA Convention for the Section, as this year's theme is Diversity.
3. Facilitated a partnership between MNEJC and Collaborative Community Law Initiative (CCLI) to help foster an influx of new lawyers to elder law with more diverse cultural and socio-economic backgrounds. Stay tuned.
4. Elimination of Bias CLE provided in December 2018; scholarship information sent out for ELI 2019; 4 diversity events advertised to Section members.

Other Section Accomplishments

Other notable accomplishments include the following:

Communications Committee:

1. 2018-2019 Year. The communications committee met bi-monthly in the past year.
2. Newsletter. Mardell Presler served as the editor of the newsletter. The format of the newsletter was refined to be more efficient for readers, and also included addition of photos. The newsletter continues to go out on a monthly basis.
3. Website Updates: Bridget has worked extensively on updating the MSBA website – specifically in moving the content over to the “Communities” and encouraging other committees to do so as well. In the process of moving content, structures and layouts were reassessed to promote efficiency and ease of use for members. We saw implementation of this in the past year, and are currently working encourage increased participation in the online communities from all committees and elder law section members.

Legislative Committee:

1. *Section Only Position.* Beginning in August 2018, the Legislative Committee sought to collaborate with the Health Law Section in a joint position in support of licensing assisted living facilities and increasing dementia care standards. After discussion, the Health Law Section determined that although they did not oppose the position, they declined to join in such a position due primarily to lack of knowledge. Therefore, for the first time in recent history, the Elder Law Section approved the following “section only” position on 10/23/2018 and submitted the same to MSBA leadership on:

Resolved that the Elder Law Section supports the creation of an assisted living license that replaces housing with services registration for those entities choosing to operate as an assisted living establishment and the creation of a dementia care unit certification for those providers offering dementia care, for the purposes of providing greater protection and clarity for consumers and providers as well as balanced administrative oversight based on level of assessed need.

No other section of the MSBA opposed the position and the MSBA President agreed to allow the Elder Law Section’s proposal to proceed as a section-only position. The section-only position was communicated to the Minnesota Department of Health and stakeholders in support of proposed legislation for an assisted living license and dementia care certification. Such legislation was proposed in both the 2018 and 2019 legislative sessions.

2. *2019 Legislative Session.* Building off of last legislative session, many stakeholders met over the course of the summer, fall, and during the 2019 session, facilitated by the Minnesota Department of Health. HF90/SF8 were introduced with many similar provisions to those

introduced last legislative session. The bill passed and was signed by the Governor on 5/22/2019.

The following are key provisions in the bill:

- Creates Assisted Living Licensure & expand dementia standards
 - Separates AL into two licenses
 - AL facility - AL defined as providing sleeping accommodations and AL services
 - AL facility with dementia care - Secured AL dementia care units must be licensed as AL with dementia care
 - Single contract for housing and services
 - Corporate disclosure requirements and definitions of controlling individuals
 - Restriction of transfers of ownership
 - Establishes minimum services
 - Establishes minimum policies and procedures
 - Requires nursing assessment upon admission
 - Creates an appeal process for AL discharge
 - MDH charged with rule making beginning 7/1/2019
 - Effective 8/1/2021
- Expands former Board of Nursing Home Examiners to Board of Executives for Long Term Services and Supports to oversee Directors for Assisted Living
 - Effective 7/1/2020
- Expands retaliation prohibition provisions
 - In AL, nursing home, and HWS settings
 - Presumption of retaliation for certain actions within 30 days of complaint
 - Effective 8/1/2019
- Create process to appeal assisted living discharge
 - Termination of services or non-renewal of housing
 - Create a relocation plan
 - Right to return to facility if absent
 - Effective 8/1/2021
- Allow placement of a camera in assisted living and nursing home
 - Guardian, health care agent, and person designated in writing can place camera
 - Notice to facility required by use of form
 - 14-day exception to notice under certain circumstances with notice to Ombudsman
 - Effective 1/1/2020
- “I’m Okay” checks must be in writing in unlicensed settings
 - Effective 8/1/2021
- Establishes a 2-year maltreatment compensation fund; client can accept \$5,000 in lieu of civil action
 - Seen as a temporary protection until AL licensure
 - Effective 7/1/2019
- Assisted Living resident survey funds set aside and intent to develop AL report card

- Establishes additional funds for the Ombudsman for Long Term Care (17 new positions)
 - \$1,456,000 in FY2020 and \$2,023,000 in FY2021
- Establishes resident and family surveys of HWS
 - \$2,682,000 in FY2020 and \$2,702,000 in FY 2021
- Additional funding
 - \$7,438,000 in FY2020 and \$4302,000 in FY2021 for MDH regulatory improvements
 - \$2,218,000 in FY2020 and \$5,114,000 in FY2021 to establish AL license

The following are provisions that, although proposed, are not included in the bill:

- No private right of action for violation of bills of rights
- No prohibition against deceptive marketing
- No general damages for vulnerable adults who are injured and die of unrelated causes (Minn. Stat. § 573.02, subd. 2)
- No staffing levels
- No increase in AL fines for regulatory violations
- No discharge and appeal rights from assisted living for 2 years

3. *Other Legislative Impacts and Future Initiatives.*

- Elderly Waiver recodification accomplished 2019
- Tax bill provisions approved in 2019 (from MSBA)
 - Attributing a deceased spouse's ownership to a surviving spouse for purposes of the three-year holding requirement in the qualified farm and small business estate tax exemption (Article 2, Sections 23, 24).
 - Allowing married farm couples who hold their property in two linked trusts to maintain agriculture homestead status (Article 4, Section 12).
 - Removing the six-year timeline for an innocent spouse to request separation of tax liability (Article 2, Section 9).
 - Enabling state relief for taxpayers who qualify for "equitable" innocent spouse relief under federal law (Article 2, Section 9).
- Opioid legislation has impact on vulnerable adults
- Authority to temporarily freeze accounts proposed to be expanded, to combat financial exploitation
- Vulnerable Adult Act updates sought in the future (outside consultant hired)
- Value Based Reimbursement System for nursing home Medicare/Medicaid reimbursement

4. *Statutory Short Form Power of Attorney.* Statutory Short Form Power of Attorney committee received additional feedback from the Uniform Law Commissioners. The committee will continue its work to respond to the feedback and hopes to bring a draft proposal in the 2020-2021 legislative session.

Annual Report submitted by Mary Ebb, Section Chair, June 28, 2019.

UPCOMING CLE

2019 Minnesota Elder Law Institute

October 10 - October 11, 8:55 AM - 4:30 PM, Minnesota CLE Conference Center, Minneapolis.

The Institute features new law and developments as well as helpful and practical sessions on a variety of topics and processes you need to know to practice elder law in Minnesota.

Register here: [2019 Minnesota Elder Law Institute](#).

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.

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:

August 14, 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.

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.

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; or Vice-Chair, Julian J. Zweber, at (651) 646-4354 or julianzweber@qwestoffice.net.

Please contact Tram Nguyen at tnguyen@mnbars.org to be added to the Elder Law Section Community Forum.

MEDICAL ASSISTANCE COMMITTEE:

The Medical Assistance (MA) Committee meetings will be at 3:30 p.m. on the third Tuesday of even-numbered months. The next meetings will be:

August 20 at 3:30 p.m.

October 15 at 3:30 p.m.

December 17 at 3:30 p.m.

February 18 at 3:30 p.m.

April 21 at 3:30 p.m.

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 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@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 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, 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.

VULNERABLE ADULT COMMITTEE:

Contact Marit Peterson at marit.peterson@elderjusticemn.org or 651-440-9303, if you are interested in participating in this committee.

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@mnbars.org.

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