

MSBA ELDER LAW SECTION E-NEWSLETTER
August 1, 2017

Vol. 9, No. 32

E-Newsletter Editorial Staff:

Communications Committee Chair: Rachel Schromen

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NEWSLETTER HIGHLIGHTS

Call for Members!

The MSBA Elder Law section is open for new members! We welcome experienced practitioners, new lawyers, and law students alike to join our community. Current section members are encouraged to invite those with an interest in Elder Law to join us.

Interested? Connect with us [online](#).

Nominations Sought For Elder Law Section Awards

The Awards Committee of the Elder Law Section is seeking nominations for Section awards to be presented at the Minnesota CLE Elder Law Institute on October 12, 2017. Nominations are being sought for the following Awards:

The Mary Alice Gooderl Memorial Award

The Mary Alice Gooderl Memorial Award is presented by the Elder Law Section to acknowledge outstanding contributions to the field of Elder Law by a member of the Elder Law Section, as exemplified by Mary Alice Gooderl, one of the founders of the Elder Law Section.

The Lifetime Service Award

The Lifetime Service Award is presented to a member of the section who has made outstanding contributions to the Elder Law Section over an entire career or many years of service.

The Elder Law Section Hall of Fame

The Elder Law Section Hall of Fame was started in 2015. The criteria for admission to the Hall of Fame include:

1. Membership in the Elder Law Section.

2. Success in litigation or other public or private advocacy having a substantial positive impact on the elderly or on the way Elder Law attorneys practice Elder Law.
3. Success in persuading CMS, DHS or another government agency to adopt substantial positive changes in medical assistance or other government programs or policies affecting the Elderly.
3. Publication of important works in the literature or other media to educate consumers or Elder Law attorneys regarding any important subject affecting the Elderly.
4. Success in obtaining legislation to protect or improve the rights or condition of the Elderly.
5. Efforts to accomplish the criteria in sections 1 to 4 that fall short of success but still deserve recognition for substantial efforts toward an important goal.
6. Other important activities by Section members that the committee members believe deserve recognition in our Hall of Fame.

Special Recognition Awards

These awards are for special efforts or accomplishments of a more isolated nature that deserve special recognition since the last Awards ceremony.

Nominations will close at 5 pm on Friday, September 15, 2017. Please submit nominations to Julian J. Zweber at 1360 Energy Park Drive, Suite 310, St. Paul, MN 55108-5252, telephone 651-646-4354 or 651-646-4539 (FAX) or julianzweber@qwestoffice.net.

Submitted by Julian J. Zweber and Stuart C. Bear, Chair and Vice-Chair, Awards Committee

2017 Elder Law Institute

The 2017 Elder Law Institute is scheduled for October 12 and 13, 2017. Registration is now open on Minnesota CLE's [website](#).

EVENTS SCHEDULED IN THE NEXT MONTH

GOVERNING COUNCIL:

August 18, 2017 3:30 pm @ 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.

MA COMMITTEE:

August 15, 2017 at 3:30 p.m.

For directions, or to attend by phone, please contact Traci Sherman with Pluto Legal, PLLC, at

tsherman@plutolegal.com or 507-247-5900 at least 24 hours in advance of the meeting. Topics for the meeting may be submitted to tsherman@plutolegal.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.

ELDER LAW NEWS

[Seven Women Charged in \\$7 Million Medical Assistance Fraud.](#)

[Sandwich Generation: Elder Law Helps Families Plan for Changes.](#)

Submitted by Joel Smith, joel@koslawfirm.com

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

QUESTIONS AND ANSWERS FROM THE MSBA COMMUNITIES

Q1: Decedent obtained MA services through elderly waiver. The PR has opened probate and received notice of a claim from the county. Beneficiary of a TODD has sent a proposed clearance certificate to the county and received notice that a claim is being processed. The only assets of Decedent are a house, which has a TODD to an individual beneficiary, and an annuity, which has another individual beneficiary. There are no probate assets. While it seems the house and annuity are both subject to estate recovery, it is not clear if there is a priority for satisfying the claim with certain assets and not others.

The value of the assets may be more than the claim and the beneficiaries of the assets are different (so using only one asset to satisfy the claim would be to the benefit of the other). Should the MA estate recovery be satisfied pro rata from the non-probate assets?

A1: Minn. Stat. 256B.15, subd. 4 provides that recovery under certain circumstances be made from non-homestead assets first.

Subd. 4. Other Survivors.

(a) If the decedent who was single or the surviving spouse of a married couple is survived by one of the following persons, a claim exists against the estate payable first from the value of the nonhomestead property included in the estate and the personal representative shall make, execute, and deliver to the county agency a lien against the homestead property in the estate for any unpaid balance of the claim to the claimant as provided under this section:

(1) a sibling who resided in the decedent medical assistance recipient's home at least one year before the decedent's institutionalization and continuously since the date of

institutionalization; or

(2) a son or daughter or a grandchild who resided in the decedent medical assistance recipient's home for at least two years immediately before the parent's or grandparent's institutionalization and continuously since the date of institutionalization, and who establishes by a preponderance of the evidence having provided care to the parent or grandparent who received medical assistance, that the care was provided before institutionalization, and that the care permitted the parent or grandparent to reside at home rather than in an institution.

(b) For purposes of this subdivision, "institutionalization" means receiving care:

(1) in a nursing facility or swing bed, or intermediate care facility for persons with developmental disabilities; or

(2) through home and community-based services under section [256B.0915](#), [256B.092](#), or [256B.49](#).

If these circumstances do not apply, I believe there are no statutory provisions that protect the homestead or other assets from recovery or that require pro-ration.

Recovery against the annuity might be a different matter. If the annuity was in existence prior to the look-back period for the decedent's MA eligibility and no changes were made to its terms (including any change in beneficiary designations) since then, the annuity would pass to the named beneficiaries outside of probate and outside of any MA estate recovery claim. See the DHS Health Care Programs Eligibility Policy Manual (EPM) at 2.4.1.4.2 regarding annuities that must name MA as the contingent remainder beneficiary.

[Here is the link.](#) Beyond these considerations, MA does not care which assets are used to pay the claim. If the survivors can agree, they can pay the claim in any way they want from whatever sources they want.

Submitted by: Julian Zweber, julianzweber@qwestoffice.net

NEWLY FORMED DIVERSITY COMMITTEE

On August 16, 2016, the Elder Law Council established our section's Diversity Committee, with Jeanine Hill as its original chairperson. Jean Gustafson of Brainerd will be chairing the committee for the coming year. If you would like to join the committee, please contact Jean Gustafson at jean@guslaw.net.

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:

Contact Laura Zdychnec at lzdychnec@mnelderlaw.com for more information.

COMMUNICATIONS COMMITTEE:

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

September 13, 2017 at 8:30 a.m.

November 8, 2017 at 8:30 a.m.

The meeting location is at 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.

GOVERNING COUNCIL:

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

August 18, 2017 3:30 pm at Monroe Village Community Room

October 12, 2017 7:30 am at MSBA Presidents Room

December 15, 2017 3:30 pm at Monroe Village Community Room

February 16, 2018 3:30 pm at Monroe Village Community Room

April 20, 2018 3:30 pm at Monroe Village Community Room

June 15, 2018 3:30 pm at 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@mnbarg.org or 612-278-6316.

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:

August 15, 2017 at 3:30 p.m.

October 17, 2017 at 3:30 p.m.

December 19, 2017 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 Legal, PLLC, at tsherman@plutolegal.com or [507-247-5900](tel:507-247-5900) at least 24 hours in advance of the meeting. Topics for the meeting may be submitted to tsherman@plutolegal.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.

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:

September 14, 2017 at 12:00 p.m.

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:

Meetings will be held on the third Friday of every other month from 12-1pm unless otherwise communicated. Meetings will be held at Chestnut Cambronne PA, 17 Washington Ave N #300, Minneapolis, MN, 55401.

Upcoming meeting dates:

September 15, 2017 at 12:00 p.m.

November 17, 2017 at 12:00 p.m.

Questions may be directed to Maya Missaghi at mayamissaghi@gmail.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 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](#).