



**PROBATE, TRUSTS AND ESTATES SECTION  
E-NEWSLETTER**

October 2022

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**Upcoming Events and CLE Programs**

**Probate, Trusts and Estates Section Council Meeting**

- Thursday, October 20, 2022 at 3:30 p.m.
- Location: October meeting being held virtually
- Contact Tram Nguyen ([tnguyen@mnbars.org](mailto:tnguyen@mnbars.org)) with any questions or to attend the meeting

**Greater MN Probate & Trust Study Group Conference Call**

- Wednesday, October 19, 2022 at 9:00 a.m.
- Location: Call-in Number: (888) 354-0094; Passcode: 9295091072
- Contact Bradley W. Hanson ([bhanson@quinlivan.com](mailto:bhanson@quinlivan.com); (320) 251-1414) with any questions or to join the group

**CLEs**

- HCBA CLE, October 26, 2022: [Say what? Best Practices for Volunteering at a Legal Advice Clinic](#)
- Minnesota CLE, November 2, 2022: [Estate Planning Across Borders](#) (Live Replay)
- Minnesota CLE, July 11-12, 2023: [2023 Probate and Trust Law Section Conference](#)

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**Minnesota Court of Appeals Holds that Guardians have Broad Immunity from Negligence Claims**

By: [Benjamin \(Ben\) Hamborg](#) and [Kelly J. Zech](#)  
September 19, 2022

The Minnesota Court of Appeals recently upheld a 2020 Minnesota statute<sup>1</sup> that bars claims against private guardians for “negligently performing the guardian’s duty to provide for the care, comfort, and maintenance needs of the person subject to guardianship.”

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<sup>1</sup> Minn. Stat. § 524.5-313(c)(2) (2020).

The case, *Zika v. Elder Care of Minnesota, Inc.*,<sup>2</sup> centered around Jean Krause, a retired nurse who suffered from advanced Alzheimer’s disease late in life. In December 2012, Ms. Krause became a resident of Heritage House in Pequot Lakes. Her long-time friend and neighbor, Naree Weaver, was appointed as her guardian and conservator.

On May 8, 2016, Ms. Krause was assaulted by David DeLong, a male nurse’s aide who worked at Heritage House. Ms. Weaver was immediately informed of the assault, but neither she nor Heritage House informed Ms. Krause’s family of the incident. Four months later, Ms. Krause died of unrelated causes. Aside from an overnight hospital stay on the day of the assault, Ms. Krause received no services for trauma related to the sexual assault.

Nearly a year later, the Crow Wing County Attorney’s Office contacted Ms. Krause’s brother, James Zika, and her son, Robert Krause. Mr. Krause believed the sexual assault coincided with his mother’s rapid decline in health. He contended that if he had known of the assault, he would have removed his mother from Heritage House, sought trauma treatment for her, and petitioned for Weaver’s removal as guardian.

Acting as the personal representative of his sister’s estate, Mr. Zika filed suit against Ms. Weaver in January 2019. The suit alleged that she negligently breached her duties as Ms. Krause’s guardian by not monitoring her care after she was sexually assaulted, neglecting to provide her with care, comfort and services afterward, and failing to inform family members of her assault or other health information.

In dismissing the claims, the district court concluded that Mr. Zika’s negligence claims against Ms. Weaver are barred by Minnesota Statutes Section 524.5-313(c)(2), which states:

“The duties and powers of a guardian . . . include, but are not limited to, . . . the duty to provide for the care, comfort, and maintenance needs of the person subject to guardianship, including food, clothing, shelter, health care, social and recreational requirements, and . . . training, education, and rehabilitation.”

In addition, the statute states, “Failure to satisfy the needs and requirements of this clause shall be grounds for removal of a private guardian, but the guardian shall have no personal or monetary liability.”

Affirming the district court’s ruling, the Minnesota Court of Appeals held that “a private guardian is immune from liability for negligence in the performance of a guardian’s duty ‘to provide for the care, comfort, and maintenance needs of the person subject to guardianship.’”

The appellate court further concluded that, because the Minnesota Legislature listed specific duties and then granted immunity for failure to perform those duties, the legislature “modified the common law by providing immunity from any negligence claims based on those duties.”

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<sup>2</sup> *Zika v. Elder Care of Minnesota, Inc.*, No. A21-1710, 2022 WL 3581828 (Minn. Ct. App. Aug. 22, 2022).

In summary, the case protects guardians from the risk of financial and personal liability in their service to wards.

A petition for review has been filed with the Minnesota Supreme Court.

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### **Pro Bono Opportunities**

#### **Cancer Legal Care:**

Website: <https://www.cancerlegalcare.org/donate/volunteer.html>

Contact: (651) 917-9000

Who they serve: Minnesotans affected by cancer

Geographic scope: Statewide

#### **Central Minnesota Legal Services:**

Website: <https://www.centramnlegal.org/volunteer-attorney-program/new-attorneys/>

Contact: (320) 257-4873 (St. Cloud); (320) 403-1051 (Willmar)

Geographic scope: Anoka, Benton, Big Stone, Chippewa, Chisago, Isanti, Kandiyohi, Lac Qui Parle, Lincoln, Lyon, Meeker, Mille Lacs, Morrison, Renville, Sherburne, Stearns, Swift, Todd, Wright, and Yellow Medicine Counties

#### **Legal Aid Service of Northeastern Minnesota:**

Website: <https://lasnem.org/pai/>

Contact: Eve Utyro at [eutyro@lasnem.org](mailto:eutyro@lasnem.org)

Geographic scope: Aitkin, Carlton, Cass, Cook, Crow Wing, Itasca, Kanabec, Koochiching, Lake, Pine, and St. Louis Counties

#### **Legal Assistance of Olmsted County:**

Website: <https://laocmn.org/volunteer/>

Contact: Victoria Ness at [victoria@laocmn.org](mailto:victoria@laocmn.org); (507) 287-2036

Geographic scope: Olmsted County

#### **Legal Services of Northwest Minnesota, Inc.:**

Website: <https://lsnmlaw.org/volunteer/>

Contact: Kristi Lanoue at [klanoue@lsnmlaw.org](mailto:klanoue@lsnmlaw.org) (Alexandria); Ruth Ruch at [rruch@lsnmlaw.org](mailto:rruch@lsnmlaw.org) (Moorhead)

Geographic scope: Becker, Beltrami, Clay, Clearwater, Douglas, Grant, Hubbard, Kittson, Lake of the Woods, Mahnomon, Marshall, Norman, Otter Tail, Pennington, Polk, Pope, Red Lake, Roseau, Stevens, Traverse, Wadena, and Wilkin Counties

#### **Mid-Minnesota Legal Aid:**

Website: <https://mylegalaid.org/support-our-work/volunteer>

Contact: (612) 746-3765; [cdaly@mylegalaid.org](mailto:cdaly@mylegalaid.org)

Geographic scope: Anoka, Benton, Big Stone, Chippewa, Chisago, Hennepin, Isanti, Kandiyohi, Lac Qui Parle, Lincoln, Lyon, Meeker, Mille Lacs, Morrison, Renville, Sherburne, Stearns, Swift, Todd, Wright, and Yellow Medicine Counties. Some services are available statewide

**Rainbow Health:**

Website: <https://rainbowhealth.org/community-resources/legal-advocacy/>  
Contact: Lynn Mickelson at [Lynn.Mickelson@rainbowhealth.org](mailto:Lynn.Mickelson@rainbowhealth.org); (612) 373-9160  
Who they serve: People living with HIV and LGBTQ communities  
Geographic scope: Statewide

**State Law Library Law Clinic**

Website: <https://protect-us.mimecast.com/s/r6sGCL95mQi3RvVBfBVIKH>  
Contact: Liz Reppe at [liz.reppe@courts.state.mn.us](mailto:liz.reppe@courts.state.mn.us)  
Geographic scope: Statewide

**Southern Minnesota Regional Legal Services:**

Website: <https://www.smrls.org/volunteer>  
Contact: Emily Bowen at [emily.bowen@smrls.org](mailto:emily.bowen@smrls.org)  
Geographic scope: Blue Earth, Brown, Carver, Cottonwood, Dakota, Dodge, Faribault, Fillmore, Freeborn, Goodhue, Houston, Jackson, Le Sueur, Martin, McLeod, Mower, Murray, Nicollet, Nobles, Olmsted, Pipestone, Ramsey, Redwood, Rice, Rock, Scott, Sibley, Steele, Wabasha, Waseca, Washington, Watonwan, and Winona Counties

**Volunteer Lawyers Network, LTD.:**

Website: <https://www.vlnmn.org/volunteer>  
Contact: (612) 752-6655  
Geographic scope: Primarily Hennepin, but some opportunities in Anoka, Ramsey, and Statewide

For more information, contact Katy Drahos at [kdrahos@mnbars.org](mailto:kdrahos@mnbars.org).

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**Call for Submissions**

We are always looking for attorneys to write brief articles for this newsletter on any issues relevant to the Section. This newsletter is distributed to the Probate, Trusts and Estates Section membership, which consists of approximately 1,118 practitioners. Writing for the newsletter is a great way to share your knowledge and expertise with your colleagues. Click [here](#) for examples of articles published in prior e-newsletters.

If you are interested in submitting an article, please contact Kiley Henry ([henry.kiley@dorsey.com](mailto:kiley.kiley@dorsey.com)) or Jenny Colich ([colich.jennifer@dorsey.com](mailto:colich.jennifer@dorsey.com)).

Best Regards,  
Kiley Henry & Jenny Colich  
Probate, Trusts and Estates Newsletter Editors

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To access the Probate, Trusts and Estates Section Website, click [here](#).

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If you do not wish to receive this E-Newsletter, please send your request to be removed from the mailing list to Tram Nguyen at [tnguyen@mnbars.org](mailto:tnguyen@mnbars.org).