

ELDRS Update

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This is a publication of the Elder Law & Disability Rights Section of the State Bar of Michigan. All opinions are those of the respective authors and do not represent official positions of the Elder Law & Disability Rights Section or the State Bar of Michigan. Comments or submissions should be directed to Christine Caswell, Managing Editor, at christine@caswellpllc.com.

ELDRS Spring Conference - Save the Date

ELDRS Spring Conference will be held March 16, 2018 at the Inn of St. John's in Plymouth. More details will be in the Winter edition of the newsletter, but registration is expected to open in December. Look for Section e-blasts for more information.

Council Updates

By Christine Caswell, Caswell Law PLLC, Lansing

ELDRS held its annual meeting on Thursday, October 5, 2017 at the Double Tree by Hilton Hotel in Bay City. At that meeting, new officers and council members were welcomed and outgoing members were thanked.

The new Executive Council for the Section is:

- Immediate Past Chair – **Michele Fuller**, Michigan Law Center PLLC, Sterling Heights
- Chair – **Sara Ann Schimke**, Jaffe Raitt Heuer & Weiss PC, Southfield
- Chair-Elect – **Christopher William Smith**, Chalgian & Tripp Law Offices PLLC, Southfield
- Secretary – **Beth A. Swagman**, Beth A. Swagman PLLC, Grand Rapids
- Treasurer – **Kelly J. McNerney Quardokus**, Q Elderlaw, Portage

Incoming Council Members

- **Gregory Richard Kish** – John A. Scott PC, Traverse City
- **Tracey Ann Rowens** – Mall Malisow & Cooney PC, Farmington Hills
- **Elizabeth M. Vincent** – Michigan Law Center PLLC, Sterling Heights

Outgoing Council Members

- **Jane A. Bassett**, Bassett & Associates PLLC, Ann Arbor
- **Michael A. Mestelle**, Mestelle Law Office PC, Sturgis
- **John B. Payne**, Garrison Lawhouse PC, Dearborn
- **David D. Sprague**, Old Capital Wealth Management, Ann Arbor
- **James B. Steward**, Steward & Sheridan PLC, Ishpeming

In addition to fulfilling his term on the council, Jim Steward was acknowledged for his contributions to the section over the years (with Patti Kefalas Dudek, who nominated him (center) and Michele Fuller, outgoing chair, (right)).



Also, members contributed to the NAELA non-profit fund which holds money for ELDRS to participate in litigation to protect its clients. The following is a list of companies and individuals who donated at the Conference. For more information on how you or your firm may make a donation, please contact the Mannor Law Group PLLC at (810) 694-9000.

- Anonymous
- Bassett & Associates PLLC
- Buhl, Little, Lynwood & Harris PLC
- Caswell Law PLLC
- Patricia E. Kefalas Dudek
- Epstein Legal Services PLLC
- Michele Fuller, Kevin Urbatsch, and Elizabeth Vincent
- Galloway and Collens, PLLC
- The Kresge Foundation
- Norman Harrison
- Mannor Law Group PLLC
- The Law Office of Erin E. Mortenson, PLLC
- Northern Michigan Elder Law PLC
- Probate Support Specialists, LLC
- Q Elderlaw
- Farrah C. Ramdayal
- Susan Wideman Schaible and Amanda Filizetti
- James Schuster
- Christopher & Caroline Smith
- James B. Steward
- Doug Wozniak

Thanks to everyone who contributed.

Legislative Update

By Todd Tennis, Capitol Services, Inc.

The Michigan Legislature focused almost entirely on No-Fault Auto Insurance reform this fall. House Bill 5013 was the subject of numerous committee hearings and amendments, as well as arm-twisting, since it was introduced on September 26. The bill came to a sudden stop when, after a marathon House

session on November 2, proponents were unable to obtain the necessary votes for passage, and it was defeated by a 45-63 margin.

In addition to working on insurance reforms, the Legislature has introduced, held hearings, and voted on several pieces of legislation that directly affect ELDRS.

POST Legislation Passes Senate – Headed to Governor

After a long-time effort on the part of ELDRS, the Michigan Senate unanimously approved HB 4170, 4171, 4173, and 4174, a package of legislation that will create a Michigan Physician Order for Suitable Treatment form (POST). These bills are result of years of effort from a number of organizations and individuals, and, once fully implemented, they will help ensure that patients' wishes are followed regarding end-of-life medical care. The House concurred in the Senate change to HB 4170 (a change requested by ELDRS; no other bills in the package were changed in the Senate) and the bills are now on their way to Gov. Snyder's desk for his signature.

Once the bills become law, the next step will be working with the Department of Health and Human Services (DHHS) to help craft the POST document itself, along with any other administrative rule changes that will be necessary to enforce its use. For today, however, congratulations are in order for the many ELDRS council members who were instrumental in passage of this legislation.

Legislation Introduced to Study Long-Term Care Needs

House Bill 4674 was introduced by Rep. Jon Hoadley (D-Kalamazoo) with the intent of DHHS commissioning a comprehensive study of Michigan's long-term care needs. Specifically, the bill would call for "an independent feasibility study and actuarial model of public, private, and public-private hybrid options to help individuals prepare for, access, and afford the long-term services and supports they need."

The bill would also require an analysis of caregiver staffing needs that would be generated by the creation of some sort of new long-term care benefit. The House Fiscal Agency Analysis of the bill estimates that the cost of such a study would be between \$500,000 and \$750,000. The bill was the subject of a hearing in the House Health Policy Committee last month. Despite bipartisan support, the price tag may be an impediment to moving forward. The bill remains in the House Health Policy Committee awaiting further action.

Legislature Exploring Ways to Prevent Exploitation of Vulnerable Adults

The Legislature focused much of its energy on passing the 2018 budget, reforming public pensions, and addressing the state's no-fault auto insurance system. But there also have been a number of bills introduced that are aimed at addressing financial abuse and exploitation of seniors and vulnerable adults.

Some of these bills, such as HB 4885 and 4886, introduced by Rep. Peter Lucido (R-Shelby Twp.), increase penalties for current crimes that impact vulnerable adults. Rep. Lucido's bills pertain to individuals convicted of using or attempting to use a vulnerable adult's money or property obtained through fraud or deceit. HB 4885 and HB 4886 increase the maximum incarceration periods and fines for such crimes. These bills were referred to the House Families, Children and Seniors Committee where they were the subject of a hearing.

Another piece of legislation, HB 4931, introduced by Rep. Robert Kosowski (D-Westland), would create civil liability for a person who financially exploits a vulnerable adult. That person would be liable to the vulnerable adult (or the vulnerable adult's estate) for damages of three times the value of the property that was fraudulently obtained, as well as court costs and reasonable attorney fees. HB 4931 was referred to the House Law and Courts Committee.

While the bills mentioned above either increase penalties or add civil liability to existing crimes, two other packages of bills would expand the class of victims for which enhanced penalties are allotted. HB 5027, 5028, and 5029, introduced by Reps. Klint Kesto (R-Commerce Twp.), Diana Farrington (R-Utica), and Vanessa Guerra (D-Saginaw) respectively, add the new category of "elder adult" to go along with the current "vulnerable adult" classification. These bills were referred to the House Law and Justice Committee.

Similarly, HB 4588 and 4589, and Senate Bills 345 and 346, introduced by Reps. Winnie Brinks (D-Grand Rapids) and Joseph Graves (R-Linden), and Sens. Rick Jones (R-Grand Ledge) and Jim Ananich (D-Flint), seek to create greater reporting requirements for investment advisers if they suspect financial exploitation against a "financially endangered adult." The House bills were sent to the House Financial Services Committee and the Senate bills were referred to the Senate Banking and Financial Institutions Committee.

Current law has enhanced penalties for crimes against "vulnerable adults." A "vulnerable adult" is defined in the Michigan Penal Code as someone who meets one or more of the following:

- (i) An individual age 18 or over who, because of age, developmental disability, mental illness, or physical disability requires supervision or personal care or lacks the personal and social skills required to live independently.
- (ii) An adult as defined in section 3(1)(b) of the adult foster care facility licensing act, MCL 400.703.
- (iii) An adult as defined in section 11(b) of the social welfare act, MCL 400.11.

The Social Welfare Act defines "vulnerable" as "...a condition in which an adult is unable to protect himself or herself from abuse, neglect, or exploitation because of a mental or physical impairment or because of advanced age."

The new legislation comprised of HB 5027-5029 adds the new category of "Elder Adult" to the section that prescribes enhanced penalties to an assault on a vulnerable adult. The bills define "elder adult" as "a person who is 65 years of age or older." HB 4588-9 and SB 345-346 seek to protect "financially endangered adults" that are defined as either being "an adult age 65 or older" or "an adult in need of protective services" under the Social Welfare Act.

The question of whether to create a classification of victim based solely on age rather has been a longstanding issue among the elder and disability advocacy community. Having a category solely defined by age makes it more likely that abusers and exploiters will be successfully prosecuted under the enhanced penalties because it eases the burden of proof on the prosecution to show that a victim is "vulnerable." However, such an addition would forever link age and vulnerability in statute, something that is strongly objectionable to many senior advocates and seniors themselves.

Each of the bills described above are well-intentioned. The authors and supporters of this legislation seek to improve the safety of Michigan's seniors and disabled adults by enhancing penalties on those who would prey upon them. The question is whether adding a special category of victim solely based on age has the potential to negatively impact the rights of seniors.

Calendar of Events

By Erma S. Yarbrough-Thomas, Neighborhood Legal Services Michigan Elder Law & Advocacy Center, Redford

ELDRS – www.michbar.org/elderlaw

- Dec. 2 – ELDRS Council Meeting, State Bar of Michigan, 306 Townsend St, Lansing, 10 a.m.
- Jan. 6, 2018 – ELDRS Council Meeting, State Bar of Michigan, 306 Townsend St, Lansing, 10 a.m.
- Feb. 3 – ELDRS Council Meeting, State Bar of Michigan, 306 Townsend St, Lansing, 10 a.m.
- March 3 – ELDRS Council Meeting, State Bar of Michigan, 306 Townsend St, Lansing, 10 a.m.
- March 16 – ELDRS Spring Conference, the Inn of St. John's, Plymouth, 8:30 a.m. - 4:30 p.m.

NAELA – www.naela.org

- Nov. 15-18 - 2017 NAELA Summit, Summit Island Hotel, Newport Beach, CA
- Nov. 18 - 2017 NAELA Chapter Leader Roundtable, Newport Beach, CA
- Dec 5 - Fiduciary Pitfalls of Managing SNT's That Own Real Estate- Presenters, Marielle F. Hazen. CELA & Shirley B. Whitenack, Esq., CAP, Webinar – 1-2 p.m. E/T
- Jan. 19, 2018 - Stetson Series - Bitcoin Consumer Scams - What Attorneys Need, Webinar, 12- 1 p.m., E/T

ICLE/SBM – www.icle.org

- Dec. 7 - Experts in Estate Planning: Estate and Distribution Planning for Retirement Benefits, Plymouth (Live)
- Dec. 7 - Handling LGBTQ Issues in Today's Workplace, Plymouth (Live)
- Jan. 3, 2018 - Tax Law Series: Planning for the Future of the Federal Estate Tax and Other Estate Planning Issues, On-Demand Seminar
- Jan. 18 - Drafting Estate Planning Documents, 27th Annual, Grand Rapids (Live)
- Feb. 15 - Drafting Estate Planning Documents, 27th Annual, Plymouth (Live)