

# ELDRS Update

## Autumn Edition 2018, Volume VIII, Issue 3

*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, Editor, at [christine@caswellpllc.com](mailto:christine@caswellpllc.com).*

### *Save the Date*

#### **ELDRS Spring Conference on March 15, 2019**

The ELDRS Spring Conference will be held from 8:30 a.m. to 4:30 p.m., Friday, March 15, 2019, at the Inn of St. John's. Look for more information in the Winter edition of this newsletter and in e-blasts from the Section.

### *Greetings from the New Chair*

*By Christopher W. Smith, Chalgian & Tripp Law Offices PLLC, Southfield*

It's humbling to serve as Chair of the Elder Law and Disability Rights Section for 2018-2019. I am forever grateful to all the chairs that I've had the honor to serve under over the last several years. I hope I can play a small part in the evolving legacy of this section.



I am still glowing about this year's Fall Conference. While it may have been cold (and the ferry a tad bumpy), the camaraderie of this Section and the spectacular programming more than made up for it. Thanks to Angela Hentkowski and the Fall Conference Committee for all their hard work. There wouldn't be a conference without all the speakers, sponsors, volunteers, and you for taking making the trek. Let's do it again, October 2-4, 2019, at Crystal Mountain!

When you become chair, you quickly realize how short a year is. While I am sure additional things will get on the agenda, my priorities for the year are:

- **Get the Section off to a good start with the new legislature and administration.** Michigan will be much different in 2019 with a new governor, attorney general, and well over half of the Michigan Legislature. With that much turnover, there is risk, and great opportunity. I've asked the Council and the Legislative Committee to come up with the Section's three legislative priorities for the term by January. For our February meeting, Capitol Services will be conducting a legislative training for the Section. And in March/early April, we are planning to have a legislative day where I hope most of you can attend. Also, we recently formed a new Administrative Committee tasked with

seeing if we can improve our relationships with DHHS and other agencies in the new administration.

- **Increased education offerings for attorneys as well as staff.** When looking at our Section's demographics, over 80% of the Section consists of solo or small firm practitioners. And when looking over the educational offerings, we find that the Section, NAELA, and ICLE generally do a good job covering more advanced topics. So, the Section is going to go back to basics. Starting in early December, we are hoping to host up to 12 webinars over the coming year. As a Section benefit, paralegals or other staff will be encouraged to participate. Stay tuned for more information.
- **Increase the emphasis on the "Disability Rights."** In my time on Council, the Section has probably put more emphasis on the "Elder Law" part of the Section's name than "Disability Rights." I am pushing the Section to look for ways where we can better earn the "Disability Rights" title. For starters, we are looking at: (1) possible litigation and/or legislative opportunities where we can make a significant impact on the disability community; (2) how we can better support attorneys and staff with disabilities in our profession; and (3) attracting additional section members who can bring additional expertise to our Section in areas such as the ADA, special education, Social Security, and so forth. If you have other ideas, please let me know!

Also, we will continue to respond to introduced legislation. Our litigation committee remains open to taking applications for litigation assistance; our Treasurer, Robert Mannor, has been tasked with helping find additional revenue resources to make sure we can continue to fund the Section's ever-expanding endeavors; and Howard Collens and his committee will assist with the unsexy, but necessary task of updating the Section's bylaws.

My door is open to any ideas, and I particularly encourage newer attorneys to our Section to get involved. We're a friendly group. Send me an e-mail at [smith@mielderlaw.com](mailto:smith@mielderlaw.com) and let's discuss.

Here's to a great year.

## Changing of the Guard



*Outgoing chair Sara Schimke (right) passes the gavel to incoming chair Christopher Smith at the ELDRS annual meeting on Oct. 18.*

ELDRS welcomed new officers and members at its annual meeting on October 18 and said good-bye to three long-time members.

### Executive Council

- Chair, **Christopher W. Smith**, Chalgian & Tripp Law Offices PLLC, Southfield
- Vice Chair, **Kelly Quardokus**, Q Elderlaw, PLC, Portage
- Secretary, **Christine Caswell**, Caswell Law PLLC, Lansing
- Treasurer, **Robert Mannor**, Mannor Law Group, PLLC, Grand Blanc
- Immediate Past-Chair, **Sara Schimke**, Chalgian & Tripp Law Offices PLLC, Southfield

### Incoming Council Members

- **Susan Chalgian**, Chalgian & Tripp Law Offices PLLC, East Lansing
- **Nicholas Ryan**, Dellenbusch & Associates PLC, Grand Rapids
- **Terri Winegarden**, Northern Michigan Elder Law PLC, Petoskey

### Outgoing Members

- **Michele Fuller**, Michigan Law Center PLLC, Macomb
- **Beth A. Swagman**, Beth A. Swagman, PLLC, Grand Rapids
- **Erma Yarbrough-Thomas**, Neighborhood Legal Services Michigan Elder Law & Advocacy Center, Redford

## Legislative Update

Election Brings Changes to Michigan

*By Todd Tennis, Capitol Services, Inc.*

After defeating Republicans Bill Schuette and Lisa Posthumus Lyons in the November 6 election, Democrat Gretchen Whitmer will be the next governor of Michigan, and Garlan Gilcrest will be the Lieutenant Governor. Democrats clinched the top of the ticket races, with Jocelyn Benson defeating Mary Treder Lang for Secretary of State, and Dana Nessel edging out Tom Leonard for Attorney General. Sen. Debbie Stabenow was also elected to a fourth term after surviving a strong challenge from political newcomer John James. Democrats were also able to flip two U.S. House seats with Haley Stevens defeating Lena Epstein in the 11th District and Elissa Slotkin defeating Mike Bishop in the 8th. Fred Upton (R-St. Joseph) staved off a tough challenge from Democrat Matt Longjohn to win his 17th term and avoid being the third Democratic pickup in Michigan's Congressional delegation. In the 13th District in Southeast Michigan, Rashida Tlaib won her race becoming the first Muslim-American woman ever to be elected to Congress.

For the state legislative races, the “Blue Wave” that would have been necessary for Democrats to win majorities in the State House and State Senate failed to materialize. The success at the top of the ticket did not translate to the huge gains they would have needed to overcome large Republican majorities in both chambers of the Michigan Legislature. The Democrats netted five seats in the State House and five seats in the State Senate to bring the partisan totals for next year to 58-52 GOP in the House and 22-16 GOP in the Senate. Both caucuses held their official leadership elections on November 8. The next Speaker of the Michigan House will be Lee Chatfield (R-Levering), and the next Senate Majority Leader will be Mike Shirkey (R-Clarklake). Democrats re-elected Jim Ananich (D-Flint) as Senate Minority Leader and chose Christine Grieg (D-Farmington Hills) to be House Minority Leader.

Elsewhere on the ballot, three constitutional changes were approved as Proposals 1, 2 and 3 all passed by large margins. Proposal 1 will legalize the sale of marijuana in Michigan for recreational use to persons age 21 and older; proposal 2 will create an independent redistricting commission to draw legislative maps; and proposal 3 makes numerous changes to voting laws, including restoration of straight party voting and no reason absentee voting. Rep. Justice Beth Clement was overwhelmingly reelected to the Michigan Supreme Court, but her Republican colleague Justice Kurtis Wilder was defeated by Democratic challenger Megan Cavanagh.

Although election experts and analysts are still pouring over voter data in attempts to find trends and predict future results, most agree that strong opinions (on both sides) about the president led to historic turnout levels. While this helped Democrats in areas that were won by Hillary Clinton two years ago, like Oakland, Wayne, and Kalamazoo counties, it had the opposite effect in areas where Donald Trump is still highly favorable, such as Macomb County and the Upper Peninsula. Even though Republicans lost their hold on the governorship, the attorney general and the secretary of state, majorities in the House and Senate will still ensure that they have a strong say in state policy. Indeed, although the Republican majorities in the House and Senate shrank in this election, the two caucuses have gotten arguably more conservative than before.

It will also take several years to understand the impact of Proposals 2 and 3. These changes to redistricting and voting laws have the potential to reshape Michigan’s political landscape. The restoration of straight-party voting (which was eliminated this year) could have an impact on down-ballot races like the university boards that suffered from a large voter drop off in this election. Similarly, the impact of same-day voter registration, no-reason absentee voting, and other voter access expansions will have an unknown effect on future voting patterns.

The greatest question is how a new independent redistricting commission will function when it is tasked with redrawing legislative maps for the Michigan Legislature and the Michigan Congressional delegation. In the past, legislators took great care to minimize the number of sitting lawmakers who would find themselves drawn into a neighboring district. An independent commission may have no such compunction about drawing multiple sitting legislators into the same district, which could lead to epic political battles in 2022.

No matter how the future political climate in Lansing shakes out, the old guard will still hold sway between now and January 1. The current legislature and governor have approximately a dozen session days in what is known as the “Lame Duck” session. Legislators who retired, are term-limited, or who were defeated will still vote on bills through December. Any bills not signed into law by December 31 will die and have to be reintroduced next session. Some of the key issues that could come up during the Lame Duck session include No-fault Auto Insurance reform, changes to public pension laws, and alterations to laws passed only a month ago dealing with the minimum wage and paid sick leave. There will also be a myriad of non-controversial bills that outgoing legislators are hoping to get over the finish line before they are forced out. House session is currently scheduled for the weeks of November 27, December 4, December 11, and December 18. Senate sessions are currently scheduled for the weeks of November 27, December 4, and December 11, with a tentative session scheduled for the week of December 18.

### ***AARP and WMU look at Senior Disparities***

*By Christine Caswell, Caswell Law PLLC, AARP Michigan Legislative Committee*

AARP Michigan, Western Michigan University College of Health and Human Services, some of the AAA's, and many other interested organizations joined together to research the disparities in health and health care for Michigan seniors, releasing the results at an event in Lansing on Oct. 2. Some of the findings included:<sup>1</sup>

- Health disparities that begin at birth continue into adulthood, according to a 2018 W. K. Kellogg Foundation study, especially disadvantaging racial and ethnic minorities.
- Twelve percent of seniors in Michigan with illnesses “reported having gone without needed care, due to cost, lack of transportation, or lack of available timely appointments.”

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<sup>1</sup> AARP, Western Michigan University College of Health and Human Services, et al., “Disrupting Disparities: the Continuum of Care for Michiganders 50 and Older,” October 2018.

- African-American seniors are less likely to have health insurance, more likely to have diabetes and high blood pressure, and are more likely to skip follow-up care than white seniors because of cost.
- Michigan comes in 40<sup>th</sup> in the country for funding for home and community-based services for both seniors and adults with disabilities.
- Michigan has 1.3 million family caregivers who provide 1.2 billion hours of care each year. The total estimated economic value of the uncompensated care is estimated at \$14.5 billion a year.
- White family caregivers expend nearly \$7,000 in out-of-pocket expenses per year while it is \$9,000 for Hispanic/Latino caregivers, and African-American/Black families spend nearly 34% of their income on caregiving.

Recommendations from the research include asking the incoming Michigan administration to increase legislative financing for long-term care home health options by 50 percent from current rates and providing broadband and telehealth opportunities to those who need to travel for adequate care. For the complete report, go to <https://states.aarp.org/disrupting-health-disparities-can-make-a-difference-in-peoples-lives/>.

## *Calendar of Events*

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

### **ELDRS – [www.michbar.org/elderlaw](http://www.michbar.org/elderlaw)**

- Dec. 1 - ELDRS Council Meeting, State Bar of Michigan, 306 Townsend Street, Lansing at 10 a.m.
- Feb. 2 - ELDRS Council Meeting, State Bar of Michigan, 306 Townsend Street, Lansing at 10 a.m.
- March 2 - ELDRS Council Meeting, State Bar of Michigan, 306 Townsend Street, Lansing at 10 a.m.
- March 15 - ELDRS - 17th Annual Spring Conference, Inn at St. John's, Plymouth
- April 6 - ELDRS Council Meeting, State Bar of Michigan, 306 Townsend Street, Lansing at 10 a.m.

### **NAELA – [www.naela.org](http://www.naela.org)**

May 9-11, 2019 - 2019 Annual Conference, Dallas/Ft. Worth, Texas. Program Information to be provided at a later date.

**ICLE/SBM – [www.icle.org](http://www.icle.org)**

- Dec. 6 - Ultimate Trial Notebook, Plymouth (Live)
- Jan. 31 - Drafting Estate Planning Documents, 28th Annual, Grand Rapids (Live)
- Feb. 14 - Basics of Advising Elderly Clients & Those with Disabilities, Plymouth (Live)
- Feb. 26 - Drafting Estate Planning Documents, 28th Annual, Plymouth (Live)
- March 14 - Drafting an Estate Plan for an Estate Under \$5 Million, Plymouth (Live)
- March 19 - Microsoft Word Academy for Lawyers and Legal Staff, Plymouth (Live)
- May 15 - Building your Future Estate Planning Practice Today, Acme (Live)
- May 16-18 – Probate & Estate Planning Institute, 59th Annual, Acme (Live)