

# ELDRS Update

## Fall Edition 2020, Volume X, Issue 4

*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).*

### *From the Chair*

*By Christine Caswell, Caswell Law PLLC, Lansing*



*Photo compliments of Marlaime Teahan.*

I don't know if we looked more like the Brady Bunch or Hollywood Squares, but this was not your previous chairs' annual meeting. Driving to the conference was much easier, and I had a comfortable seat, but the food options were pretty limited. We did miss seeing each other in person. This is a great section where we enjoy each other's

company. But the virtual meeting also attracted members who normally could not take time away to attend. For now, this will be our norm. Thanks to **Angela Hentkowski** and **Susan Chalgian** for pulling this off.

And, just like everything else this year, I am an unusual choice for Section chair. On Nov. 1, I had my 10<sup>th</sup> anniversary as an attorney. Unlike others who came into law later in life, I'm not even from a related field. My background is in communications and public relations. But, like so many others, I was drawn to this area of the law because of personal experience. I had parents with varying degrees of disabilities, and, as they aged, dealt with senior issues as well.

My focus will be on our relatively new Disability Rights Committee. We have expanded beyond special needs trusts and public benefits to work on the legal issues facing this overall community. Some of our own members have challenges in accessing public buildings and courts. Once we created this committee, we started partnering with other

organizations, encountering a huge array of issues. At this point, we are pretty fluid in our mission, addressing concerns as they are brought to our attention.

As for Medicaid/long-term care issues, we are a Section of brilliant minds whom I trust to bring developments to Council's attention. **Christopher Smith** will continue to represent the Section on the Attorney General's Elder Abuse Taskforce, and we will work with **Alison Hirschel** and the Michigan Elder Justice Initiative, as well as other related other organizations.

I would be remiss if I did not acknowledge that **Immediate Past-Chair Kelly Quardokos** was an absolute rock star this past year. Her dedication to the Section and the practice of law during these turbulent times was invaluable. I can only hope to do half as well—preferably without the drama.

### ***Your 2020-2021 ELDRS Council***

*By Christine Caswell, Caswell Law PLLC, Lansing*

ELDRS welcomed one new officer, renewed three members for a second term, and added two new members at its annual meeting on October 8.

#### New Executive Council

- Chair, **Christine Caswell**, Caswell Law PLLC, Lansing
- Chair-Elect, **Robert Mannor**, Mannor Law Group, PLLC, Grand Blanc
- Secretary, **Angela Hentkowski**, Steward & Sheridan PLC, Ishpeming
- Treasurer, **Maria Messina Wiersma**, Chalgian & Tripp Law Offices PLLC, Southfield
- Immediate Past-Chair, **Kelly Quardokus**, Q Elderlaw, PLC, Portage

#### ***Save the Dates***

- **Spring Conference**, March 19, 2021 (virtual)
- **Fall Conference**, October 4-6, 2021 at the DoubleTree by Hilton Hotel in Bay City (note, this is Monday-Wednesday)

#### Incoming Council Members

- **Antonia Harbin-Lamb**, Neighborhood Legal Services - Elder Law Center, Redford
- **Nadia Vann**, Buhl, Little, Lynwood & Harris, PLC, East Lansing

#### Renewed Council Members for a Second Term

- **Sanford Mall**, Mall Malisow & Cooney, PC, Farmington Hills
- **Tracey Rowens**, Elder Law & Advocacy Center, Redford
- **Theresa Orlaske-Rich**, RichLaw PLLC, Farmington Hills

## Outgoing Members

- **Gregory Kish**, Kish Dykstra & Scott, PC, Traverse City
- **Christopher Smith**, Chalgian & Tripp Law Offices PLLC, Southfield

## *Legislative Updates*

*By Todd Tennis, Capitol Services, Inc.*

### Elections

The 2020 presidential election was about the most 2020 thing about 2020. The only way it could have been more 2020 was if the Electoral College ended up tied at 269-269.

Thankfully, the nation was spared the constitutional crisis that would have wrought.

The Michigan House will retain the same partisan split as it has now, with 58 Republican members and 52 Democrats. Each party flipped a pair of seats resulting in a net zero change. Republican candidates Timothy Beson and David Martin defeated Democratic incumbents Brian Elder and Sheryl Kennedy, respectively, in Bay City and Genesee County. Meanwhile, Democratic candidates Kelly Breen and Christine Morse flipped two Republican-held open seats in Novi and Kalamazoo County.

The Michigan Supreme Court did see a change in partisan makeup, as Justice Bridget Mary McCormack and Elizabeth Welch, both Democratic nominees, were elected. Justice McCormack was re-elected for her second 8-year term, while Welch fills the seat of outgoing Justice Stephen Markman. This will switch the partisan makeup of the high court from 4-3 Republican to 4-3 Democrat.

Michigan's Congressional delegation will retain essentially the same partisan makeup. All incumbents were reelected, and the open seats went to the parties that held them previously. The only technical exception is CD-3 in the Grand Rapids area. Outgoing Congressman Justin Amash was originally elected as a Republican but switched to an Independent earlier this year. Republican Peter Meijer won the race over Democrat Hilary Scholten and will return the seat to GOP ranks.

### Legislation

The Michigan Legislature is now in the "Lame Duck" phase. ELDRS and the Probate Section will continue working with the legislature on permanently codifying remote witnessing and notarization.

### **Senate Committee Reports Out Visitation Bill**

Senate Bill 798, sponsored by Sen. Michael McDonald, seeks to ensure that guardians cannot restrict visitation with a ward unless there are valid reasons for doing so. Earlier this year a bill with a similar intent, SB 110 was signed into law as PA 170 of 2020. The two bills are similar in goals but differ in practice.

PA 170 creates a method for the court to appoint a limited guardian to supervise visits if it finds, by clear and convincing evidence, that a person with the care and custody of an incapacitated individual denied access to the ward, and that the ward desired access. The court would also have to find that it was in the ward's best interest to allow the visitation.

SB 798 takes a different approach by prohibiting a guardian from restricting an incapacitated individual from having contact with a person with whom they desire contact. The prohibition can be overcome, but only if the guardian demonstrates one of the following:

- That the ward does not desire contact;
- That contact would pose the risk of physical, psychological, or financial harm;
- That a personal protection order is in effect between the ward and the person.

If a guardian prohibits contact alleging a risk of physical, psychological, or financial harm, the guardian would be required, within 7 days of restricting contact, to send the person, court, and health facility or agency where the ward resides, notice specifically identifying each reason for the restrictions and why less restrictive options were not reasonably available. A person who had been restricted from contacting an incapacitated individual in this manner could petition the court for the restriction to be removed.

The bill was reported out of the Senate Judiciary Committee on Nov. 5. The ELDRS Council voted on Nov. 7 to support this bill.

### **Governor Signs COVID-19 Nursing Home Bill**

In September, we reported that SB 1094, sponsored by Sen. Lucido (R-Macomb County), was moving through the Legislature. The bill created new reporting requirements for the Michigan Department of Health and Human Services regarding regional "hubs" designated for COVID-19 patients. It also codified restrictions on the placement of COVID-19 patients in nursing homes. The bill has now passed the Legislature and been signed into law as PA 231 of 2020.

Specifically, the bill would prohibit placement of COVID-19 positive patients into a nursing home unless one of the following applies:

- The patient has recovered from COVID-19;
- The nursing home has designated an area within the facility for individuals who test positive and has demonstrated a program for retaining and providing appropriate care to COVID-19 positive individuals.

### ***Back to Basics Webinar Series***

*By Amanda Murray, Bassett & Associates, Ann Arbor*

Our Back to Basics Webinar series continues as an exclusive benefit to ELDRS Section members. This benefit extends to your assistants and paralegals as well. For more information, contact Amanda Murray. Stay tuned to SBM Connect on how to register.

The last webinar for 2020 is:

- November 17 at 12 p.m. - “How to Select a Fiduciary,” with Lisa Lepine of The ARC of Macomb County, Inc.

Stay tuned for more webinars and roundtables in 2021.

### ***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)**

All meetings will be virtual until further notice:

- Dec. 5 - ELDRS Council Meeting, 10 a.m.
- January – No meeting
- Feb. 6 - ELDRS Council Meeting, 10 a.m.
- March 6 - ELDRS Council Meeting, 10 a.m.
- March 19 – ELDRS Spring Conference – Time to be determined
- April 3 – ELDRS Council Meeting, 10 a.m.
- May 1 – ELDRS Council Meeting, 10 a.m.

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

- Nov. 18 – Webinar - Lunch & Learn: Medicaid & SSI: When Client Owns a Business, Presenter, Louis W. Pierro, 1-2 p.m., EST
- Dec. 8 - Webinar - When to Convert a Client’s IRA after the Secure Act, Presenter, Robert Keebler, 1-2:30 p.m., EST

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

- March 18, 2021 - Drafting an Estate Plan for an Estate Under \$5 Million, Plymouth (Livestream) Probate & Estate Planning Certificate Program Required Seminar