

# ELDRS Update

## Winter Edition 2021, 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 – Pay to Play***

*By Christine Caswell, Caswell Law PLLC, Lansing*

I've had people ask how to get on Council. It's pretty easy: join at least one of our numerous committees, come to meetings, and work hard. ELDRS is involved in many legislative, administrative law, and disability rights issues, and we welcome new people. The committees we currently have meet individually and then bring proposals to Council:

- **Legislative** – Works with our government affairs officials on proposing and reviewing legislation which impacts elders and those with disabilities
- **Administrative Law** – Addresses policy proposals and decisions by government agencies
- **Litigation** – Reviews applications for ELDRS to initiate or support ongoing litigation efforts
- **Disability Rights** – Reviews legislation, policy, and issues facing those with disabilities
- **Membership** – Organizes educational webinars and events for ELDRS members
- **Fall Conference** – In non-pandemic times, scouts locations, secures contracts, finds speakers and sponsors, and promotes the event

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

- **Spring Conference**, March 19, 2021 (virtual) – 11 am to 3 pm (see article below)
- **Fall Conference**, October 4-6, 2021 at the DoubleTree by Hilton Hotel in Bay City (note, this is Monday-Wednesday)

The chair appoints committee members, so if you would like join one, please contact me at [christine@caswellpllc.com](mailto:christine@caswellpllc.com).

### ***Spring Conference***

*By Harley Manela, Mall, Malisow & Cooney, PC, Farmington Hills*

The 18th annual ELDRS Spring conference will be held virtually on Friday, March 19, 2021 from 11 am to 3 pm. The speakers will be:

- Sara Grivetti, Director of the State Long Term Services at the Department of Health and Human Services;
- A panel on the Intersection of Disability Rights and Elder Law moderated by ELDRS Chair Christine Caswell
- A panel moderated by Christopher Smith, from Chalgian & Tripp Law Offices, PLLC, on the Attorney General's Elder Abuse Task Force
- Medicaid updates moderated by Catherine Jacobs of Warner Cross + Judd.

There will be no charge for the virtual conference. A registration link will be sent to members closer to the event.

### ***Remote Legal Services for Older Adults: How Does It Work?***

*By Antonia Harbin-Lamb, Neighborhood Legal Services, Michigan - Elder Law and Advocacy Services, Redford*

Providing legal services to older adults during the pandemic has been a challenge. We all know this pandemic has been life changing and isolating for everyone. As a legal services provider, Neighborhood Legal Services – Elder Law and Advocacy Center had to get a plan in place to serve our older adult population. We were quickly introduced to the concept of remote legal services.

One of the major issues we faced is how we planned to meet with our clients who were the most vulnerable to COVID-19. We were met with challenges when our building was closed on and off due to the Governor's orders and one COVID outbreak. Masks, face shields, and gloves became our new uniform. We have had to remain flexible and adjust as necessary.

During the summer months, we set up tables and met with clients outside to complete document executions; all the while making sure to disinfect in between each client. During the fall and winter months, we have set up one room dedicated for client visits. Serving clients in this new way has helped us to become very organized and has created more communication among our staff.

Early in the pandemic, our organization also had to figure out how we would provide education to our potential clients, considering the barriers with access to the internet and computers. We researched online platforms like Zoom, GoToMeeting, and a few others to find out which would work best for older adults. Our organization settled on Zoom because it had several features that we liked, but most importantly our clients had the option to call in to join our educational workshops, even if they did not have the video feature available. Once this decision was made, staff had to quickly learn the platform and then pass that information on to clients or their caregivers. Whenever there were technical assistance

issues, our administrative staff rose to the occasion. They consistently help clients to navigate Zoom and connect them to attorneys working remotely.

Fortunately, we have been successful at keeping our legal services program operating efficiently. We have worked hard on behalf of our clients with limited staff. Over the last several months, we have provided legal services for 628 older adults. Our attorneys have worked on a variety of cases, the most prevalent being estate planning, landlord tenant, and probate.

Due to the pandemic, we were forced to change our previous “First Tuesday Workshop,” where we welcomed up to 100 older adults each month in the gymnasium of the Redford Community Center, to provide a life planning workshop and address their legal issues. For the last six months, our organization has been offering a “First Tuesday Workshop” on Zoom. We have had 178 participants join us online.

We have also been able to provide other educational programs via Zoom like the “Caregiver Conversations Workshop.” Additionally, we turned the workshop into a podcast, created in conjunction with our sister agency Great Lakes Legal Mediation division. Currently, it can be found on WJR’s The Great Voice, Apple Podcasts, and Spotify. You can find the podcast at <https://thegreatvoice.com/Shows/caregiver-conversations>.

### **Where do we go from here?**

Our clients, like the rest of the world, are adjusting to the new normal of remote legal services. As vaccinations are ramping up, we see a flickering light at the end of the tunnel. However, because our older adults are among the most vulnerable, we still have a long way to go before we will feel safe providing legal services the way we did in the past. Some question whether we will ever provide legal services the way we did before. What we know now is we will need to keep our present procedures in place for some time and that remote legal services, although not ideal, can work.

### ***Legislative Updates***

*By Todd Tennis, Capitol Services, Inc.*

#### **New Year, New Legislature**

In early January, the 101st Michigan Legislature convened in Lansing, and with it came several new members of the Michigan House. The new session got off to somewhat of a slow start, as their first full week of session was canceled due to concerns over possible political violence. New members of the House of Representatives were sworn in on January 13, and full committee assignments were released later in the month. It is not unusual for the first month of a new session to be light on policy and heavy on organizing, but between

the pandemic and varying amounts of political unrest, 2021 seems to be moving even more slowly than usual.

Twenty-six new members of the Michigan House of Representatives were sworn in, and they enter state government during one of the most trying times. The new faces include a former gubernatorial candidate (Shri Thanadar, D-Detroit), the son of a former Lt. Governor (Bryan Posthumus, R- Greenville), and the most aptly named representative to ever come from northern Michigan (John Damoose, R-Harbor Springs). Rep. Jason Wentworth (R-Clare) is the new Speaker of the House, and Donna Lasinski (D-Ann Arbor) will lead the minority caucus.

House Committee Assignments were released in late January. Rep. Graham Filler (R-DeWitt) will continue as chair of the House Judiciary Committee, and Rep. Mary Whiteford (R-Casco Twp.) will continue in her role as chair of the Department of Health and Human Services Appropriations Subcommittee. Rep. Rodney Wakeman (R-Saginaw Twp.) will take over as the new chair of the House Families, Children and Seniors Committee.

The Senate had to fill some committee vacancies as well with the departure of Senators Peter MacGregor (R-Rockford) and Pete Lucido (R-Shelby Twp.). Sen. Roger Victory (R-Georgetown Twp.) was named to replace Sen. Lucido as chair of the Senate Judiciary Committee, and Sen. Jon Bumstead (R-Newaygo) will take Sen. MacGregor's place as chair of the Joint Committee on Administrative Rules. Sen. Rick Outman (R-Six Lakes) will assume the chairmanship of the Senate Appropriations Subcommittee on the Department of Health and Human Services.

### **New DHHS Leadership**

Former DHHS Deputy-Director Elizabeth Hertel has now been appointed by the governor as director. David Knezek, formerly with the attorney general's office, will be the new deputy-director.

### **Legislature Extends Remote Witnessing/Notarization Statute through June 2021**

Legislation to extend remote witnessing/notarization statutes passed the Legislature in the December "Lame Duck" session and were signed into law by Gov. Whitmer. The bills extend the ability to use remote witnessing and notarization through June 30, 2021. The ELDRS Council, the Probate and Estate Planning Section, and financial services advocacy groups have been working to make more permanent changes so that remote witnessing/notarization will be more easily utilized beyond the current pandemic. We plan to propose legislation and identify potential bill sponsors in the next few weeks.

### **Nursing Home Camera Bill Reintroduced in 2021**

Last session, one of the last bills passed by the House and Senate dealt with the usage of cameras in nursing home settings. Senate Bill 77, sponsored by Sen. Jim Runestad (R-Rochester), originally sought to grant broad rights to nursing home residents and their families to place cameras in their rooms. ELDRS initially supported the bill to reduce nursing home abuse and neglect while making it easier to prosecute perpetrators of such.

Unfortunately, the bill was drastically changed as it moved through the legislative process. Representatives of the nursing home industry successfully won amendments to the bill that would actually make it harder for nursing home residents to place electronic devices in their rooms. Worse, it created several legal hurdles that could prevent important video evidence from being admitted in court. With regret, the ELDRS Council voted to reverse its position on Senate Bill 77 so that it opposed the version that was sent to Governor Whitmer.

Due in part to that opposition, Gov. Whitmer declined to sign the bill into law. Because the bill was presented to the governor within 14 days of the Legislature's adjournment, the bill was "pocket vetoed." However, Sen. Runestad has reintroduced the bill again this year as Senate Bill 33. SB 33 is identical to the version that was passed by the Legislature and sent to the governor last year.

### **COVID Response**

Despite a new session, the main focus of most policymakers in Lansing remains on the COVID-19 response. Gov. Whitmer has pushed for a more rapid rollout of vaccines while she has continued to shutter certain businesses and activities to slow the spread of the virus. Before the legislature closed the books on the 2019-2020 session, they sent the governor a \$465 million COVID-19 relief funding package that is primarily aimed at providing relief to workers and small businesses and expanding vaccination infrastructure. Gov. Whitmer signed the bill, but line-item vetoed \$220 million in funds directed to the Unemployment Benefits Trust Fund claiming that it amounted to a tax giveaway to the employer-funded fund. However, the language in the supplemental bill tied the \$220 million to an extension of benefits from 20 weeks to 26 weeks for those filing after January 1. Gov. Whitmer is now calling upon the legislature to reinstate the extension.

That, and other developments, have led to a growing rift between Gov. Whitmer and the Republican leaders in the Michigan legislature that shows no signs of abating. Most Republican lawmakers are furious with Gov. Whitmer's executive actions closing schools and businesses, feeling that they have been left out of major policy decisions regarding the pandemic. The legislative branch can control the budget, and early indications are that leaders in the House and Senate plan to wield that power aggressively this year.

Some of that aggressiveness was seen in late January when the House Republican Caucus released their COVID-19 strategy. The press release asserted that the House would refuse to appropriate federal COVID-19 relief funds until the governor gave up some of the executive authority her administration has wielded to issue public health orders. It was no coincidence that this metaphorical throwing down of the gauntlet occurred just hours before the governor's State of the State address.

The next battleground will be over the 2021 budget process which will start with the governor's budget presentation in February. Rep. Thomas Albert (R-Lowell), has been named chair of the House Appropriations Committee, and he has been working closely with Rep. Jason Wentworth (R-Clare), the new Speaker of the House, on their budget strategy. It appears they intend to primarily work with their Senate counterparts and will largely ignore the governor's requests. The attitude harkens back to the favorite phrase of longtime Senate Appropriations Chair Harry Gast, "The governor proposes, and the Legislature disposes."

The acrimony over the governor's and House's competing COVID-19 relief plans are a preview of what will be a very difficult budget process. The proposal was met with a mix of apathy and skepticism by Republican lawmakers. One key legislator described it as a collection of bullet points rather than a plan of action. Another stated that they expect House and Senate leaders to give the governor's request the same deliberation she has given to them, which is zero. With the new session starting like this, it will almost certainly lead to a long and drawn out appropriations process that will likely go through summer and into the fall.

### ***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 at [amurray@bassettlaw.com](mailto:amurray@bassettlaw.com). Stay tuned to SBM Connect on how to register.

The next webinar is:

- March 10 at 12 p.m. - "Elder Mediation," with Antonia Harbin-Lamb Neighborhood Legal Services, Michigan - Elder Law and Advocacy Services, Redford
- May 13, at 12 p.m. - "Alternatives to Long-Term Care Facilities," with Michelle Danou, Ombudsman.

- July 15, at 12 pm. - “Appealing CMH Denials,” with Marianne Huff, President and CEO, Mental Health Association in Michigan
- September 21, at 12 p.m. - “Disability Rights” with Nadia Vann, Buhl, Little, Lynwood & Harris, PLC; Jill Babcock; and Michael Bartnik, Law for Baby Boomers, PLLC

## ***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:

- March 6 - ELDRS Council Meeting, 10 a.m.
- March 19 – ELDRS Spring Conference – 11 a.m. - 3 p.m.
- April 3 – ELDRS Council Meeting, 10 a.m.
- May 1 – ELDRS Council Meeting, 10 a.m.

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

- March 24-26 Annual Conference – Webinar

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

- March 18 - Drafting an Estate Plan for an Estate Under \$5 Million, Plymouth (Livestream) Probate & Estate Planning Certificate Program Required Seminar
- May 11 - Pandemic lessons learned: New Tools to Prosper in Estate Planning. Presenters, Terrence G. Quinn, and Douglas A. Mielock. Livestream. Registration is limited to 40.
- May 20-21 - Probate & Estate Planning Institute, 61st Annual. Livestream. Includes 10 livestreamed sessions.