

# 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](mailto:christine@caswellpllc.com).*

## *Save the Date*

ELDRS' Spring Conference will be Friday, March 6, 2015, at the Inn of St. Johns in Plymouth. Details on registration and topics will be in the Winter Edition of the *ELDRS' Update*. Stay tuned.

## *ELDRS Has Great Fall 2014 Conference*

### **New Officers Elected**

*By Christine Caswell, Caswell Law PLLC*

ELDRS had its largest Fall Conference in October with over 160 attendees, including section members, ombudsmen, and other state workers. Whether it was the latest issues in elder law and disability rights, the scenic Mackinac Island site (although it certainly wasn't the weather), or simply the wide array of speakers, evaluations showed that attendees found the conference to be a valuable experience. Speakers discussed national trends in elder law, Michigan-specific issues in Medicaid planning, issues with dementia and Alzheimer's, and Michigan's legislative concerns. ELDRS also had paid sponsors for the first time who reported a good response from attendees. While a large committee helped pull the event together, we would like to especially thank **Beth Swagman** who has chaired the event for the past three years for all of her hard work to expand the conference. Next year's conference will be Sept. 30-Oct. 2, at Boyne Mountain Resort.

On the last day of this year's conference, ELDRS held its annual meeting and named the following new officers:

- Immediate Past Chair - **Rosemary Howley Buhl**, The Law Office of Rosemary Howley Buhl, PC, East Lansing
- Chair - **Patrick Bond**, Bond Estate Planning & Elder Law, PC, St. Clair Shores
- Chair Elect - **John Payne**, Garrison Lawhouse PC, Dearborn
- Secretary - **Michele Fuller**, Michigan Law Center PLLC, Sterling Heights
- Treasurer - **Sara Schimke**, Barron Rosenberg Mayoras & Mayoras PC, Troy

The current council members are as follows:

- **Jane Bassett**, Bassett & Associates PLLC, Ann Arbor
- **Christine Caswell**, Caswell Law PLLC, Lansing
- **C. Jill Goodell**, Goodell Legal Services PLLC, Grand Rapids
- **Angela Hentkowski**, Steward & Sheridan PLC, Ishpeming - **newly elected**
- **J. David Kerr**, Kerr Law Firm PLLC, Mt. Pleasant
- **William Lucius**, Lucius Law Office PLLC, Sault Ste. Marie
- **Robert Mannor**, Michigan Estate Planning Law Center PLLC, Grand Blanc
- **Maria Messina**, Great Lakes Legal Inc Elder Law Division, Redford
- **Michael Mestelle**, Mestelle Law Office PC, Sturgis
- **Kelly Quardokus**, Q Elderlaw, Portage
- **Christopher Smith**, Chalgian & Tripp Law Offices PLLC, Jackson
- **David Sprague**, The Estate Firm, Clinton Twp. - **newly elected**
- **James Steward**, Steward & Sheridan PLC, Ishpeming
- **Beth A. Swagman**, Beth A. Swagman PLLC, Grand Rapids
- **Erma Yarborough-Thomas**, Neighborhood Legal Services Michigan Elder Law & Advocacy Center, Redford

## ***Legislative Update***

*By Todd Tennis, Capitol Services, Inc.*

### **Hi-Tech Estate Planning – How to Deal with Digital Assets**

The last decade has seen an amazing development of new forms of electronic communication and commerce. Social networking, online banking, downloadable entertainment and cloud-based computing are just some of the innovations that have become commonplace in the last several years. The advent of such technologies has not only changed the way we communicate and do business; it has established a completely new form of property: the digital asset.

Frequently, new technologies spawn the need for new laws. Congress has wrestled with issues such as net neutrality, copyrights, and online privacy for years. But, more recently, lawmakers across the country are debating how to deal with digital assets in estates and wills. It is no easy task, since by their very nature, digital assets are complicated.

An example is how the storage of entertainment has changed. A decade ago, most people would collect media like music and movies on formats such as CDs or VHS tapes. Now it is much more common for people to download songs or television shows directly to electronic devices. More frequently, the downloaded data is not even stored on hardware we possess (such as a

smart phone), but rather, it is kept in the “cloud” where users can access it at their whim. The question of who truly “owns” these assets is not as clear cut as one might think.

The issue gets even more complicated when the digital assets in question involve access to bank accounts, online stock trading, or other commercial interests. Similarly, the ownership of personal items such as photographs, videos, or writings becomes murkier when they are uploaded to social networking sites or blogs. The question of who truly owns or can have access to one’s digital assets becomes downright thorny if the individual who created the online data or accounts passes away or becomes infirm.

To bring some clarity to these questions, Rep. Kevin Cotter (R-Mt. Pleasant) is championing a package of legislation that would provide guidelines for the disposition of a decedent’s digital assets. The Fiduciary Access to Digital Assets Act (House Bills 5366-5370) seeks to amend sections of the Estates and Protected Individuals Code (EPIC) to allow access to digital assets by conservators, trustees, personal representatives, and agents of durable powers of attorney. It is modeled after a proposal crafted by the National Council of Commissioners on Uniform State Laws.

The discussions on the bills have sparked interest from a number of different parties. The Probate Section of the State Bar is (as of this writing) developing its official position on the bills, and the Elder Law and Disability Rights Section has members who are taking a close look at the bills. At the same time, representatives from several major online companies such as Google, Yahoo, and Facebook have also weighed in with their concerns. The Motion Picture Association of America has already won an amendment that would prohibit access to media that had been illegally possessed (i.e. pirated) by a decedent or ward.

Despite there being a small number of legislative session days left this year, Rep. Cotter is pushing hard to complete passage of these bills before January. If he is successful, amendments to EPIC concerning digital assets will be on the books before the new year. If not, the bills will die and have to be reintroduced in 2015.

### **Gov. Snyder Announces Disability Employment Initiative**

Gov. Snyder announced an executive directive on Oct. 27 intended to make it easier for people with disabilities to get employment in Michigan. Executive-Directive 2014-I was developed in coordination with the Michigan Dept. of Civil Rights, the Civil Rights Commission, the State Equal Opportunity and Diversity Council, and the Civil Service Commission and directs state agencies to eliminate barriers to people with disabilities who apply for state jobs, including the following steps:

- Working with the Civil Service Commission and executive branch and agencies to provide clear objectives and opportunities for people with disabilities who seek state employment in an integrated setting.
- Reviewing current training programs for all state employees to ensure they cover disability etiquette and best practices.
- Recommending a goal to the Executive Office and all state departments and agencies for hiring self-identified people with disabilities within state government while maintaining confidentiality of employee information.
- Working with government and the private sector to learn about best practices for this hiring.
- Working with the Dept. of Technology, Management, and Budget to ensure all printed and Internet materials comply with the ADA and the ADA Accessibility Guidelines.

### ***Medicare Open Enrollment Season***

*By Kelly J.M. Quardokus, Q Elderlaw, Portage*

It is “open enrollment” time (Oct. 15- Dec. 7, 2014) for Medicare, so elderlaw attorneys might want to encourage clients to look at their present plans (especially if they are in an “Advantage plan”) as now is the time to change if they are unhappy or want to do some savvy comparisons. For clients who need more information about these plans, attorneys may refer them to MMAP at either 1-800-803-7174 or [mmapinc.org](http://mmapinc.org).

### ***ELDRS and APS***

*By Bradley Vauter, Bradley Vauter & Associates PC, Grand Ledge*

The ELDRS’ Council authorized sending a letter to state representatives and senators, and to the governor’s office, to encourage better staffing in Adult Protective Services (APS). On behalf of the Section, **Michael Mestelle, Maria R. Messina and Brad Vauter** will draft the document and send in supporting materials too. This advocacy follows up on a meeting the section had with DHS Director Maura Corrigan in March of 2011 where we had encouraged her to put more resources into the APS system.

Some say APS is almost the “step-child” of DHS when compared to Child Protective Services (CPS). But the state’s population of elderly and vulnerable adults is growing, and reorganization of APS staff alone won’t solve the problem. National standards suggest that APS workers should have approximately 25 active cases at a time to do adequate work. Michigan levels right now are at 42 per worker—and that is after they have thinned out potential cases. This caseload might explain some of the recent audit findings, including that Michigan APS turned away cases that should have had fuller investigations and that APS wasn’t able to respond as quickly as

their own standards required when there was a call about alleged exploitation or abuse of a vulnerable adult. Funding allowing for adequate staffing would address these concerns.

## ***Calendar of Events***

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

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

- Jan. 29-31, 2015 - NAELA Summit, Island Hotel, Newport Beach, CA
  - Advanced Elder Law Review – Jan. 27-28

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

- Nov. 18 - Digital Assets: What Now? On-Demand Webcast
- Nov. 18 - Experts in Estate Planning: Estate & Distribution Planning for Retirement Benefits, Plymouth - Live
- Dec. 11 - Getting the Most Out of Expert Witnesses, On-Demand Webcast

### **2015 ICLE Seminars**

- Jan. 22 - 24<sup>th</sup> Annual Drafting Estate Planning Documents, Grand Rapids - Live
- Feb. 4 - Drafting An Estate Plan for an Estate Under 5 Million, Plymouth - Live
- Feb. 12 - 24<sup>th</sup> Annual Drafting Estate Planning Documents, Plymouth - Live/Webcast
- Feb. 26 - Fundamentals of Estate Administration, Plymouth - Live/Webcast

### **Other Events**

- Dec. 6 - ELDRS Council Meeting, Bassett & Associates PLLC, 2045 Hogback Rd., Ann Arbor, at 10 a.m.
- Feb. 7 - ELDRS Council Meeting, Bond Estate Planning & Elder Law PC, 400 Maple Park Avenue, Suite 402, St. Clair Shores at 10 a.m.
- March 6 - ELDRS' Spring Conference, The Inn of St. Johns, Plymouth