

# ELDRS Update

## **Spring Edition 2019, Volume VIX, Issue 1**

*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 Fall Conference will be Oct. 2-4 at the Crystal Mountain Resort. Registration information will be coming out later this month.

### ***Supreme Court Decides Hegadorn***

#### **Volunteers and ELDRS Litigation Fund Made It Possible**

After countless hours of dedication in preparing briefs and oral arguments by ELDRS members and member donations to ELDRS litigation fund, on May 9, the Michigan Supreme Court reversed the Court of Appeals on *Hegadorn v Department of Human Services Director, et al.*, Docket Nos. 156132, 156133, and 156134 (Mich 2019), stating:

Marital assets placed in an irrevocable trust for the sole benefit of a community spouse are not automatically considered countable assets for the purpose of an institutionalized spouse's initial eligibility determination for Medicaid long-term-care benefits. Rather, such assets become countable only if circumstances exist under which the trust could make a payment to or for the benefit of the institutionalized spouse. Accordingly, the Court of Appeals judgment and the ALJ's final hearing decisions in each case were vacated.

The Section would especially like to thank James Steward, Angela Hentkowski, James Schuster, Nancy Nawrocki, and David Shaltz for all their hard work. Michigan is also indebted to Ron Landsman from Maryland who provided crucial amicus support on NAELA's behalf. This would not have been accomplished without them.

Donations to the MI-NAELA fund, which supported this litigation, may be made at [https://www.naela.org/MINAELA/Fundraising/Gift\\_Detail.aspx](https://www.naela.org/MINAELA/Fundraising/Gift_Detail.aspx). The Section needs this financial support to continue fighting for its clients. Also, all donations are currently being matched, so this is another good reason to donate now.

## ***Legislative Updates***

*By Todd Tennis, Capitol Services, Inc.*

### **ELDRS Legislative Day**

The Section will be holding its first Legislative Day on May 21 in Lansing. The goal is to develop relationships with lawmakers and provide them with the expertise of ELDR section members. While the focus will be on building working relationships with Michigan legislators, we will also be promoting policy changes on Medicaid, MiChoice waivers, and caregiver contracts. Elizabeth Hertel, DHHS Deputy Director, will also be meeting with the group.

### **ELDRS Meets with Legislators on Family Caregiving and Medicaid Rules**

On April 16, ELDRS Chair Christopher Smith and Legislative Committee Chair Susan Chalgian met with key legislators in Lansing. Rep. Hank Vaupel (R-Fowlerville), the chair of the House Health Policy Committee, and Rep. Doug Wozniak (R-Shelby Twp.), an ELDRS member, met with us, along with legislative staff from the office of Rep. Kathy Crawford (R-Novi), the chair of the House Families, Children and Seniors Committee. The discussion focused on improving support for family caregivers, revising Medicaid policies that harm seniors, and on reforming the process in which Medicaid rules are promulgated. We received a favorable reaction to our issues from legislators and staff. Rep. Vaupel offered to arrange a meeting between the legislators, ELDRS, and key personnel at the Department of Health and Human Services. We are hoping that the meeting will take place in the next few weeks and that it will include leadership in the Medicaid office.

### **Elder Abuse Package**

The House Families, Children and Seniors Committee took testimony on the Elder Abuse package (HB 4254-4260 and HB 4265) aimed at increasing penalties for perpetrators of financial or physical abuse on vulnerable adults and adding “elder adult” as a special class of victim.

### **Senate Version of DHHS Budget Partially Restores MI Choice Waiver Reduction**

Gov. Whitmer’s appropriations proposal included an approximately \$8 million reduction for the Home and Community Based Waiver, commonly known as the MI Choice Waiver. The state budget office explained that the reduction was due to the program not using that amount in the prior fiscal year. Senior advocacy groups were dismayed to learn that \$8 million went unspent while over 3,000 individuals remained on the waiting list.

Several possible explanations for the discrepancy have surfaced, ranging from a shortage of direct care staff, problems with the technical database systems used by enrolling agencies, and changes in slots and funds allocated to each agency. The Senate Appropriations Committee restored \$3 million to the program, resulting in what would be an approximately \$5 million reduction should the Senate version of the budget be adopted. We will learn what the House

proposes, but current scuttlebutt is that it will be an improvement over both the governor's and the Senate's proposals.

The Program for All-Inclusive Care for the Elderly (PACE) also received a cut of approximately \$3 million. This cut was proposed by the Department of Health and Human Services due to actuarial adjustments in caseload and costs. The Senate version of the DHHS budget concurred with the proposed reduction.

### **Budget Game of Chicken Looming**

On March 5, Governor Whitmer unveiled her 2020 budget proposal. The foundation of that proposal was a \$.45 per gallon gas tax increase that would raise enough new dollars to reach the goal of \$2 billion in additional transportation funding that experts say is desperately needed. The Legislature, however, is very averse to such a large tax increase, and polls show that the public is not favorable either. As of this writing, the House and Senate are moving ahead with their own budget proposals. It seems likely that they will present the governor with a 2020 budget that cuts programs to shift those funds to transportation. Just how much that will be and which programs will feel the pain is still unclear. Gov. Whitmer has already indicated opposition to any budget that raises less than the \$2.5 billion. Republican leaders in the legislature argue that they want to pass a balanced budget first and then hold separate discussions over possible tax increases afterward. Most observers feel that this could result in a stalemate and possible even a gubernatorial veto of the budget, forcing the Legislature to work through the summer to hammer out a compromise.

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

*By Maria R. Messina Wiersma, Chalgian & Tripp Law Offices, PLLC, Southfield*

Our Back to Basics Webinar series continues as an exclusive benefit to ELDRS Section members. Adding even more to the value of your membership, this benefit extends to your assistants and paralegals as well. Tune in to the upcoming webinars listed below:

#### **05-23-19 Contested Guardianships**

Noon Harley D. Manela, Mall Malisow & Cooney PC, Farmington Hills  
<https://attendee.gotowebinar.com/register/5446663241853852162>

#### **06-20-19 Petitions for Appointment of Guardian - Developmentally Disabled Individual**

Noon Arthur L. Malisow, Mall Malisow & Cooney PC, Farmington Hills  
<https://attendee.gotowebinar.com/register/1591054195243398914>

#### **07-11-19 Medicaid Application Procedural Odds & Ends**

Noon Susan Meier, Miller Johnson, Grand Rapids  
<https://attendee.gotowebinar.com/register/7432508784966191618>

#### **08-15-19 Special Needs Toolbox**

Noon Christopher W. Smith, Chalgian & Tripp, Southfield  
<https://attendee.gotowebinar.com/register/1912008236461036034>

**09-09-19 VA Aid & Attendance Basics**

Noon Robert D. Mannor, Mannor Law Group PLLC, Grand Blanc  
<https://attendeegotowebinar.com/register/2149153103363033346>

Looking for more topics? Interested in presenting? Contact Maria R. Messina Wiersma at [messina@mielderlaw.com](mailto:messina@mielderlaw.com) with your request.

***Former ELDRS Chair John B. Payne Passes Away***

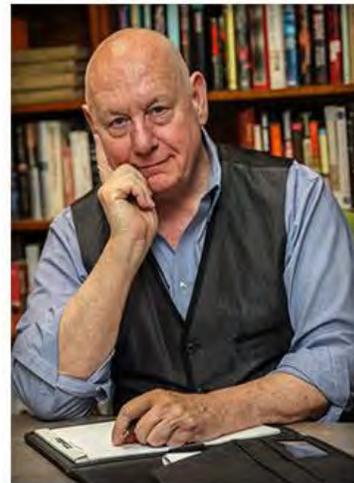
John B. Payne, former chair of the ELDR Section and founder of this newsletter, passed away unexpectedly on March 6, 2019. Payne's Michigan and Pennsylvania elder law practice, Garrison LawHouse, PC, was established in 1983 in Michigan after Payne received his Juris Doctor from Detroit College of Law. In 1988, he received a Master of Laws in Taxation from Wayne State University Law School.

Payne was the chair of the Elder Law and Disability Rights Section from 2015-2016 and the chair of the Allegheny County, Pennsylvania Elder Law Committee from 2012-2014.

He also served on the Pennsylvania Supreme Court Elder Law Task Force from 2013-2014 and was the author of West's *Michigan Probate Manual* and *Counseling the Elderly Client in Michigan* plus numerous articles and seminar manuals. Payne appealed many criminal, civil rights, and tax cases in state and federal courts, including the U.S. Supreme Court.

With dedication to community involvement, Payne was chair of the board of Fairlane Community Mental Health Centre and led Fairlane in a successful merger to create Lincoln Behavioral Services, a community mental health agency. He was also instrumental in establishing the Dearborn Public Schools Education Foundation to fund innovative programs throughout Dearborn Public Schools and served as treasurer and chair of the Foundation for over 10 years.

Payne is survived by his wife Roberta Mau, son Andrew Payne (Kimberly), daughters Marcella Brown, Piper Payne, Pauli Payne and four grandchildren, brother Howard Payne, sisters Nancy Rupert (Jim) and Mary Ann McDonald (William).



## ***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)**

- June 1 - ELDRS Council Meeting, State Bar of Michigan, 306 Townsend Street, Lansing at 10 a.m.
- July - No Council meeting
- Aug. 3 - ELDRS Council Meeting, Stewart & Sheridan, 205 South Main Street, Ishpeming
- Sept. 7 - ELDRS Council Meeting, State Bar of Michigan, 306 Townsend Street, Lansing at 10 a.m.
- Oct. 2-4 – ELDRS Fall Conference and Annual Meeting, Crystal Mountain Resort

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

- May 16 - Stetson Series - Social Media & Your Online Presence, Webinar, 12 - 1:00 p.m. EDT
- June 11 - A Practical Guide to Medicare in 2019, Webinar, 1:30 – 2:30 p.m. EDT
- Aug. 15-17 - 14th Annual Council of Advanced Practitioners Conference, Grand Bohemian Hotel in Asheville, North Carolina

### **MINAELA – Webinars for MINAELA members only**

- June 4, 12 p.m. - Explaining the Difference Between MIChoice Waiver and Nursing Home Medicaid (Michelle Biddinger)
- Real Estate (TBA)
- Nov. 5, 12 p.m. - Special Needs Planning (Chris Smith)

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

- May 16-18 - Probate & Estate Planning Institute, 59th Annual, Acme (Live)
- June 20-21 - Probate & Estate Planning Institute, 59th Annual, Plymouth (Live)
- June 28 - Completing the Medicaid Application: A Hands-On Workshop, Ann Arbor, Free Event- Exclusive to Elder Law Certificate Program Subscribers
- Sept. 12-13 - ICLE Elder Law Institute, 5th Annual, Plymouth (Live)
- Sept. 13 - Medicaid Workshop: Navigating MI Choice Waiver & Beyond, Plymouth (Live)