

ELDRS Update

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From the Chair

Home Edition—Literally

*By Kelly J. M. Quardokus, Q Elderlaw PLC, Portage
Section Chair*

These are strange times, and change is all around. Sometimes, change is slow and gradual, and sometimes it's like a freight train coming at you 1,000 miles an hour non-stop for weeks on end. We are living in the second scenario.

But as life and the practice of law changes constantly and quickly around us, what a privilege it is to be chair of the Elder Law and Disability Rights Section (ELDRS) of the State Bar of Michigan. (Ok, truth be told, I could have done without the worldwide pandemic, but those were the cards that were dealt.) It has been said that during a crisis, you see what people are "made of," and the lawyers in ELDRS are made of strong and resilient stuff!

As the crisis unfolded, immediately, ELDRS attorneys voiced widespread concern and led the charge to keep safely providing essential legal services to our very vulnerable clients. ELDRS attorneys pursued ways to help colleagues and worked together with other organizations, sections, and state agencies to advocate for emergency legal assistance.

I want to take a minute to update you as to what's been happening in the ELDR Section since March 2020 and thank all of ELDRS Council and so many members who have been going non-stop in the last couple of months, especially the leadership team of **Bob Mannor, Angela Hentkowski, Christine Caswell**, and past-chair **Christopher Smith**. (*Editor's Note: **Chair Kelly Quardokus** was an essential and active participant as well.*)

Here's what's been happening over the last 6-8 weeks:

ELDRS Annual Spring Conference Cancellation

As the coronavirus was just beginning in Michigan, in consideration of our vulnerable client-base, ELDRS was one of the first Sections to take action, and the spring conference was canceled. Quick thinking on the part of the Council and Spring Conference Committee (**Harley Manela**) made it possible to cancel the conference without any major Section expenses.

Note: If you have not received your refund for this event, and you used a credit or debit card, there is a form you must send to the State Bar of Michigan. (You may also elect to donate any conference fees to ELDRS instead of receiving a refund, but this must be indicated in writing.) If you need another copy of this form, please contact Treasurer Angela Hentkowski at ahentkowski@stewardsheridan.com.

Stay at Home – Stay Safe Executive Order Issued: Remote Notarizing/Witnessing

Committees and subcommittees were quickly formed as ELDRS attorneys voiced concerns about serving vulnerable clients when unable to meet clients personally. Rapidly, these committees got to work to produce a “white paper” executive order to address remote notarizing and legal documents needing witnesses. Section members **Howard Collens** and **Nathan Piwowski** contributed greatly to this effort. Also, working with our lobbyists at Capitol Services, **Todd Tennis** was able to communicate with state government officials, together with the Probate and Estate Planning Section, to address remote notarizing and witnessing issues. Executive Order 2020-41 was entered on April 8, only a few weeks after the Stay at Home/Stay Safe Executive Order was entered. Many state departments and stakeholders had input into this process, and we were able to get the three main ideas addressed: 1) allowing attorneys (and others) to remotely notarize documents without being one of 5 “approved vendors” under the Secretary of State, 2) allowing remote witnessing where statutes required in-person presence, and 3) allowing in-person “visits” to occur with two-way video/audio conferencing.

Recent Extension of 2020-41 in EO 2020-74

On May 5, 2020, EO 2020-74 was entered which extended and expanded remote notarizing/witnessing until June 30, 2020. EO 2020-74 increased the time signors must send documents to witnesses from 24 to 72 hours. Once received, witnesses also have 72 hours to sign and return documents to the signor or their designee. Note that with EO 2020-74, the notary timelines are still the same. Todd Tennis did an amazing job on both EO 2020-41 and EO 2020-74 to make our ideas and concerns known in this new and different way to advocate.

Legislative Work: Remote Notarizing/Witnessing

Legislative work has already begun with state senators and representatives in a joint Probate and ELDRS subcommittee to fashion legislation for a long-term solution to the remote notarizing and witnessing issues. Work is fast-tracked to review the current emergency measures being used in the Michigan Executive Orders, as well as examining what is being used in other states. The practical lessons learned during the last month of using EO 2020-41 are also being reviewed. If you have any insight, please share your experiences and/or ideas of how to improve the process.

ELDRS COVID-19 Responsive Webinars

Several ELDRS members volunteered their valuable time during the COVID-19 crisis to do research and share their expertise. **Michele Fuller** provided helpful pointers on remote practice management. Howard Collens and Nathan Piwowski created helpful checklists and sample documents and guided us through the new remote notarizing and witnessing process under the Executive Order. **Alison Hirschel** alerted us to the many changes that have been occurring in long-term care facilities over the last few months and provided helpful legal tools to track

changes. These excellent webinars and many others have been posted by member **Maria Messina Wiersma** listed elsewhere in this newsletter.

What's Next?

Along with the legislative work being done, more timely webinars are being organized. We will also continue to meet by phone or video conferencing or however we can work collectively on the new challenges that arise. How will we provide legal services to our clients in the future? How will our lives and our clients' lives be changed by the coronavirus? When will we be able to meet with our clients and each other again? Can binge-watching television cause permanent brain damage? Can kids go to school year-round to make up for lost time and sanity? We don't know the answers.

But there are words of wisdom, tried and true over the centuries, on which to rely. Said to have been uttered by the wisest of kings and repeated by fellow attorney Abraham Lincoln, a phrase that is true and appropriate in all times and situations:

“And, this too shall pass ...”

Stay safe and healthy.

Legislative Updates

By Todd Tennis, Capitol Services, Inc.

In addition to the activity cited above, here are some other legislative updates.

Appropriations Chair Expects Major Revenue Shortfalls for State Government

Sen. Jim Stamas (R-Midland), chair of the Senate Appropriations Committee, participated in a video conference with Capitol Services. On that call, he laid out his expectations for the budget, both the current and upcoming fiscal years. While official projections will not be available until after the Revenue Estimating Conference later this month, early estimates are that the state will see a current year budget shortfall approaching \$3 billion. Approximately half of that shortfall will be in the state General Fund, with the other half affecting the School Aid fund.

Options for balancing the budget are all difficult. The state's "Rainy Day Fund" currently stands at approximately \$1.2 billion, but using the bulk to plug current-year budget gaps could negatively affect the state's credit rating, creating further problems. Moreover, since the state is already halfway through the 2020 fiscal year, options for cuts seem even more painful. When asked about possible revenue enhancements to fill the gap, Sen. Stamas stated that a tax increase would be next to impossible at this time even if it were not an election year.

The Legislature is expecting Gov. Whitmer to issue executive order budget cuts to address this year's shortfall. There is the possibility that federal stimulus funds could blunt the impact, but nothing has yet been guaranteed. Some of the cuts can come from the unexpended balance stemming from the portion of last year's gubernatorial vetoes that were not restored, but that would only make up for a fraction of the total shortfall.

The state has already instituted a hiring freeze and issued temporary layoffs to thousands of state employees. The state budget office is reviewing thousands of state programs looking for areas where reductions can be made with as little negative impact as possible. Unfortunately, the problem is severe enough that very few programs will be unscathed in the current fiscal year, and any efforts to expand or create new programs in FY2021 will be enormously difficult.

We expect to know more about the major budget decisions for the current year later in May. As for next year's budget, Sen. Stamas stated that the Legislature still intends to present a budget proposal to Gov. Whitmer by July 1. However, that proposal will likely be a bare-bones template that will be subject to many changes as the ongoing economic impact of the pandemic is gauged.

Rep. Wozniak to Introduce Power of Attorney Legislation

As the legislature returns to a regular schedule, we expect to see legislation introduced regarding powers of attorney. ELDRS member and State Rep. Doug Wozniak (R-Shelby Twp.) plans to introduce legislation amending the Estates and Protected Individuals Act (EPIC) that will clarify the duties and responsibilities under a durable power of attorney. The bills will also spell out the circumstances in which a durable power of attorney may be refused and provides penalties for refusal for reasons other than those contained in the bill.

Even with the Legislature returning to regular session, it may be some time before these bills will receive a committee hearing due to the backlog most committees are experiencing.

ELDRS Adds Disability Rights Committee

*By Shannon DeWall, Law Offices of Shannon DeWall, PLLC, Livonia
Chair of the Disability Rights Committee*

Starting when Christopher Smith was chair of the ELDRS Section and continuing with our current chair, Kelly Quardokus, the section has been looking for opportunities to impact the disability community in a positive way. Due to the efforts of these chairpersons, the Disability Rights Committee was launched in 2019. The purpose is not only to address disability rights in the general community but to also support attorneys and others in the legal profession who have disabilities. We want to encourage more involvement with the section from those attorneys who have expertise in areas such as the ADA, special education, and Social Security Disability Income.

The Disability Rights Committee is currently working on two disability rights issues. First, is the lack of ADA-compliant restrooms in the Coleman A. Young Municipal Center (CAYMC), which was brought to our attention by an attorney who works in the building. Committee members drafted a letter to various city and county officials asking for action to be taken to resolve this problem. This letter was a first step by the Section to address the larger issue of the lack of accessibility in Michigan courthouses for the general public, as well as the judges, staff, and practicing attorneys.

The second issue of healthcare rationing was brought to light by the COVID-19 pandemic and a leaked Henry Ford Health System draft letter outlining how patients would be prioritized for access to life-saving equipment. Healthcare rationing is an issue across our county as complaints have been filed by several disability rights organizations against several states. One complaint addressed the Alabama Department of Public Health Emergency Operations Plan which specifically singled out and excluded certain people with intellectual disabilities from access to ventilators in the event of rationing. To address this issue in our state, several of our committee members have become part of a larger disability rights coalition to create fair policies here in Michigan, as well as ways we can educate the community about healthcare access rights.

We encourage anyone interested in disability rights issues to become a member of ELDRS and join the Disability Rights Committee. If you have any questions about the committee, or how to join, please contact the me, Shannon DeWall, at 734.237.8507 or shannon@dewall-law.com.

Back to Basics Webinar Series

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

The Governor's Stay at Home Order has not stopped ELDRS from providing value to our members and facilitating continued service to their clients. ELDRS members Michele Fuller, Howard Collens, Nathan Piwowarski, and Alison Hirschel all stepped up to provide timely information in uncertain times through our webinars. A huge thank you to all for taking the time to do so.

Links to the bonus webinars, as well as all past ELDRS webinars are included below. If you've already finished "Tiger King" and "Ozark," the ELDRS Back to Basics webinar series might be your next binge watch.

ELDRS also continued its ELDRS Exchange events by utilizing Zoom for a virtual meeting in April. The next ELDRS Exchange will be held in June. Watch the listserv for the date and details.

The next scheduled webinar is July 30, 2020 at noon. Attorney Lisa Ruby will present "Name that Medicaid Program: Deciphering Non LTC Medicaid."

Here are past webinars available for review:

- 04-23-20 BONUS WEBINAR: Representing Long Term Care Clients in a Crisis
Alison Hirschel, Michigan Elder Justice Initiative, Lansing, Michigan
<https://register.gotowebinar.com/recording/508659774216989455>

- 04-14-20 BONUS WEBINAR: Remote Witnessing and Notarial Acts
Howard Collens, Galloway and Collens, PLLC, Huntington Woods, Michigan
Nathan Piwowarski, McCurdy, Wotila, and Porteous, PC, Cadillac, Michigan
<https://attendeegotowebinar.com/recording/475119171812614923>
- 03-24-20 BONUS WEBINAR: Protecting Your Practice from Coronavirus
Michele P. Fuller, Michigan Law Center PLLC, Macomb, Michigan
<https://attendeegotowebinar.com/recording/7280925722980287746>
- 03-12-20 Caregiver Contracts
Lisa H. Beatty, Nawrocki Center for Elder Law Special Needs & Disability Planning PLLC, Brighton, Michigan
<https://attendeegotowebinar.com/recording/4544829519900253190>
- 01-23-20 PACE Program
Erin Majka, Chalgian & Tripp, Kalamazoo, Michigan
<https://attendeegotowebinar.com/recording/7928385238274772492>
- 11-12-19 Handling Fiduciary Real Estate Transactions
Christine Caswell, Caswell Law PLLC, Lansing, Michigan
<https://attendeegotowebinar.com/recording/1543300212349824268>
- 09-09-19 VA Aid & Attendance Basics
Robert D. Mannor, Mannor Law Group PLLC, Grand Blanc, Michigan
<https://registergotowebinar.com/recording/8082032089642771213>

Calendar of Events (subject to change or cancelation)

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

ELDRS – www.michbar.org/elderlaw

- June 6 - ELDRS Council Meeting, 10 a.m., Gotowebinar.com attendance only
- July - No meeting
- Aug. 8 - ELDRS Council Meeting, Steward & Sheridan PLC, 205 S Main St, Ishpeming at 10 a.m.
- Sept. 12 - ELDRS Council Meeting, State Bar of Michigan, 306 Townsend Street, Lansing at 10 a.m.
- Oct. 7-9 - Fall Conference, Double Tree Hilton, 1 Wenonah Park Place, Bay City

Michigan NAELA

- July 17 - Michigan NAELA's Summer Summit, Kellogg Center, East Lansing

ICLE/SBM – www.icle.org

- June 18-19 - Probate & Estate Planning Institute, 60th Annual, Plymouth (Live)