

# ELDRS Update

## Winter 2024, 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 Maria Messina Wiersma, Chalgian and Tripp Law Offices, PLLC, Southfield*



Happy 2024! I'm looking forward to another year of advocacy and education with ELDRS. Our Legislative Committee is busy reviewing pending legislation affecting our clients and our practices; the Membership and

Education Committee is putting together a schedule of webinars as well as meet and greet opportunities with judges and court staff from around the state; the Disability Rights Committee continues to educate others and advocate for accessibility and other issues facing our clients and colleagues with different abilities; our newest committee, Public Service, which is made up of non-profit legal agencies, is already collaborating with some of our other committees; and our Conference Committees are hard at work planning two great opportunities for our Section to gather and grow as practitioners.

While we are busy digging out of the recent snowfall, it's hard to believe our annual Spring Conference is only a few weeks away. We are returning to the Kellogg Center in East Lansing for our [We Wish It Was] **Spring Conference on Friday, February 23, 2024**. Check out the conference agenda below for the great topics lined up. If you need any reasonable accommodations to attend this conference, please reach out to Harley Manela.

As a reminder, most of our Council meetings going forward will be on the **second Friday** of the month at **noon** via Zoom. Grab lunch and log in to see what ELDRS is working on this year.

### *Save the Dates*

- **Spring(ish) Conference**  
February 23, 2024  
Kellogg Center, East Lansing  
(see story below with link and list of topics)
- **Fall Conference**  
October 9-11 located at the Double Tree Hotel in Bay City

**Note:** See the calendar at the end of the newsletter for the 2024 Council meeting schedule. Zoom-only meetings will be on Fridays at noon; in-person meetings will still be on Saturdays at 10.

Members have missed the camaraderie of in-person meetings, so three of our monthly meetings will be held in person at **10 am on Saturdays**. Join us **April 6, 2024, in Grand Rapids; June 1, 2024, in Southfield; and September 7, 2024, in East Lansing**. I invite you to come to one or all of these in-person meetings to enjoy good company, good discussion, and good food. See the full schedule in the calendar below.

Finally, if you aren't already, I encourage you to get involved in ELDRS. Share your time and talent. Grow your knowledge and your practice. Opportunities abound to pursue your passion in ELDRS. We need the contribution of all our members to respond to legislative and administrative issues facing our clients. Weigh in on pending legislation or help draft new legislation, leveraging your expertise and the experiences of your clients to improve our practice. Write about an interesting case you've had in our newsletter. Present a webinar on a niche topic you have expertise in. Every one of our members has something unique to contribute to ELDRS. I welcome you to share it with us. Reach out to me if you have any questions about how you can get involved.

## ***Spring Conference Agenda and Registration***

*By Harley M. Manela, Mall Malisow & Cooney, P.C.*

Following is the agenda for the Spring Conference on Friday, February 23 at the Kellogg Center in East Lansing.

- 8:30 - 9 am - Registration
- 9-10:30 am - Molly Rans, Director, SBM Lawyers and Judges Assistance Program
- 10:30 - 10:45 am - Break
- 10:45 - 11:30 am - Intersection of Elder Law and Disability Rights Law
  - Nadia Vann - ELDRS Disability Rights Committee Chair
  - Jill Babcock - Attorney
  - Valerie Kutz-Otway - Chalgian & Tripp Law Offices PLLC
- 11:30 am - 1:00 pm - Lunch
  - Speaker: Michigan Rep. Kelley Breen
- 1 - 2:30 pm Medicaid Update
  - Terri Winegarden - Winegarden Elder Law, PLLC
  - Charles Ofstein - DeMent & Marquardt, PLC
  - Arthur Malisow - Mall Malisow & Cooley, PC
- 2:45 - 3 p.m. Break
- 3 - 4:30 pm Uniform Power of Attorney Act (UPOAA)
  - Christine Savage – Lowe Law Firm, PC
  - Howard Collens - Galloway and Collens PLLC

Registration Fees

- Section Member: \$150.00
- Non-Member: \$200.00
- Patron \$150.00

Register for the conference.

***2024 Updated Numbers for Elder Law Practitioners***

*Contributed by Attorney Erin Majka, Chalgian & Tripp Law Offices, PLLC  
Kalamazoo, Michigan*

**Medicaid**

Divestment Penalty Divisor	\$10,870.00
Individual Resource Allowance	\$2,000.00
Minimum Community Spouse Resource Allowance	\$30,828.00
Maximum Community Spouse Resource Allowance	\$154,140.00
Personal Needs Allowance	\$60.00
Guardian/Conservator Fee	\$83.00
Shelter Standard	\$739.50
Standard Utility Allowance	\$680.00
Minimum Monthly Maintenance Needs Allowance	\$2,465.00
Maximum Monthly Maintenance Needs Allowance	\$3,853.00
Pre-Paid Irrevocable Funeral Limit (BAM 805)	\$14,720.00
Home Equity Cap	\$713,000.00
Waiver and PACE Income Cap	\$2,829.00

### Social Security

	<b>Monthly benefit</b>
Supplemental Social Security Income (Individual)	\$943.00
Supplemental Social Security Income (Couple)	\$1,415.00
Asset Limit (Individual)	\$2,000.00
Asset Limit (Couple)	\$3,000.00
Social Security Disability – Substantial Gainful Activity	\$1,550.00 \$2,590.00 if blind \$1,110.00 trial work period
Retirement Social Security – Maximum Benefit at Full Retirement Age (66 y/o)	\$3,822.00

### Veteran's Benefits

<b>Unmarried Veteran</b>	<b>Annual Amount/Monthly Amount</b>
Aid & Attendance	\$27,609.00/\$2,300.75
Housebound	\$20,226.00/\$1,688.83
Basic	\$16,551.00/\$1,379.25
Max. Annual Pension Rate 5%	\$827.00
<b>Married Veteran or Veteran w/ 1 Dependent</b>	
Aid & Attendance	\$32,729.00/\$2,727.42
Housebound	\$25,348.00/\$2,112.33
Basic	\$21,674.00/\$1,806.17
Max. Annual Pension Rate 5%	\$1,083.00
<b>Surviving Spouse</b>	
Aid & Attendance	\$17,743.00/\$1,478.58

Housebound	\$13,568.00/\$1,130.67
Basic	\$11,102.00/\$925.17
Max. Annual Pension Rate 5%	\$555.00
<b>Surviving Spouse w/ 1 Dependent</b>	
Aid & Attendance	\$21,116.00/\$1,759.67
Housebound	\$16,989.00/\$1,415.75
Basic	\$14,529.00/\$1,210.75
Max. Annual Pension Rate 5%	\$726.00

**December 1, 2023 – November 30, 2024 net worth limit to be eligible for Veterans Pension benefits is \$155,356.00**

**World War I** - April 6, 1917, to November 11, 1918

**World War II** - December 7, 1941, to December 31, 1946

**Korean conflict** - June 27, 1950, to January 31, 1955

**Vietnam War era** - November 1, 1955, to May 7, 1975, for Veterans who served in the Republic of Vietnam during that period; August 5, 1964, to May 7, 1975, for Veterans who served outside the Republic of Vietnam.

**Gulf War** - August 2, 1990, through a future date to be set by law or presidential proclamation

***Legislative Update***

*By Todd Tennis, Capitol Services, Inc.*

**2024 Legislative Landscape Still Murky**

The Michigan Legislature returned to session on January 10, but the semi-official start every year occurs at the governor’s State of the State Address which she delivered on January 24. Gov. Whitmer highlighted progress on some of her signature items such as the growth of manufacturing in Michigan and repair of major roads and bridges. She also called on the legislature to enact a handful of new priorities including education and long-term care. The reaction to her address was divided along partisan lines, with Democrats cheering wildly and Republicans remaining silent. However, she was able to find one item on which both sides could cheer when she held up and waved a Detroit Lions towel.

The legislature adjourned session early last year, and signs so far indicate a slow start to 2024. The reason stems from the two vacancies in the State House created when former

Representatives Lori Stone (D-Warren) and Kevin Coleman (D-Westland) won their respective mayoral races last November. Their absence creates a 54-54 partisan split in the Michigan House and an opportunity for what had been the minority Republican party to flex its muscles. There have been indications that the Republican caucus will hold out even on bipartisan legislation, unless they are given some level of shared power. Democrats, led by Speaker of the House Joe Tate (D-Detroit), have so far refused to entertain adopting any sort of shared power arrangement like the one the chamber had in the early 1990s when there was a 55-55 split. Speaker Tate seems content to wait for special elections to fill the two vacant House seats in April rather than negotiate over leadership of the chamber. Consequently, it could become difficult or even impossible for the House to pass legislation until they are back to a full complement this spring.

Even though the Senate composition has not changed, that chamber has also paced itself coming into the new year. Many committees have yet to meet in 2024, although they are expected to return to their regular weekly schedules now that the State of the State Address has taken place. The Senate Civil Rights, Judiciary and Public Safety Committee took testimony on January 25 on a package of bills making general amendments to the Estates and Protected Individuals Act. House Bills 4416-4419 are a product of the Probate and Estate Planning Section and had previously passed the House unanimously.

### **Guardianship Reform Bills**

An issue being followed by ELDRS in The Senate Civil Rights, Judiciary and Public Safety Committee is much more controversial. In 2023, the House passed a package of guardianship reform bills aimed at creating additional state oversight of professional guardians and conservators. House Bills 4909-4912 and House Bill 5047 would place additional restrictions on professional guardians and conservators regarding how they interact with protected persons and how many protected persons a guardian or conservator could be assigned. The bills would also create an Office of State Guardian that would be responsible for certifying professional guardians and conservators and for responding to complaints about them.

The proponents of the package state that enhanced oversight is necessary to respond to instances of neglect or omission on the part of guardians and conservators which has led to protected persons being harmed. The bills would also strengthen the ability of guardians ad litem to contest a petition for guardianship and assist potential protected persons who believe a guardian or conservator is unnecessary. The Office of State Guardian would be responsible for regulating guardians and conservators, and providing educational and development opportunities with the goal of improving service and care to protected persons.

Opponents of the bill package point to the current shortage of guardians and conservators with the concern that raising requirements (and probably the workload) would exacerbate the shortage. There has also been discussion on the Office of State Guardian itself, specifically over the issue of where in state government it should be placed. The bills, as passed the House, would place the office within the Michigan Department of Health and Human Services. This has raised concerns over whether such a placement would create conflicts of interest between department staff tasked with providing services to vulnerable adults and those overseeing guardians and conservators. The Department of Licensing and Regulation has been suggested by some advocates as a better choice, particularly because that department is already responsible for the bulk of health care and occupational licensing in the state.

The debate over the final resting place of the Office of State Guardian is one of the issues that has prevented the bills from moving in the Senate. The other issue still being assessed is how it will be organized and funded. Gov. Whitmer's Annual Budget presentation will take place on February 7 and that might provide additional insight.

### **Caregiver Tax Credit**

The governor also introduced a tax relief program in her State of the State Address to provide tax relief for Michigan caregivers. Gov. Whitmer's "Caring for MI Family Tax Credit" would provide up to \$5,000 in tax relief for thousands of Michigan families, covering expenses such as counseling, transportation, and nursing or respite services. The tax credit would allow more elders in Michigan to age in place and help parents caring for children with long-term needs. According to AARP, unpaid family caregivers spend an average of \$7,242 annually<sup>1</sup> out of their own pockets and the economic value of this care is an estimated \$600 billion.<sup>2</sup>

## ***ADA: The Truth about Accommodations***

*By Jill Babcock, Detroit*

*Editor' Note: ICLE held an ADA Accommodation Workshop in Plymouth which became available for streaming on November 23, 2023*

[https://www.icle.org/modules/store/seminars/schedule.aspx?product\\_code=2023CK5347](https://www.icle.org/modules/store/seminars/schedule.aspx?product_code=2023CK5347)

When an applicant or employee asks for accommodations some initial questions are: *Do I have to hire an unqualified applicant because they are disabled?; Is the accommodation going to bankrupt the business?; Can I deny the requested accommodation?* The easy answer to these questions is NO, but read on to learn the intricacies of the answers. In recent years, the US

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<sup>1</sup> AARP, "Caregiving out of Pocket Costs Study" (2021).

<sup>2</sup> Susan C. Reinhard, Selena Caldera, Ari Houser, Rita B. Choula, AARP Public Policy Institute, "Valuing the Invaluable: 2023 Update: Strengthening Supports for Family Caregivers (2023).

Department of Justice, as well as the judicial system, have cracked down on employers who incorrectly deal with such requests, resulting in monetary penalties, fines, and settlements, so a little preparation can save you from that fate.

Businesses that make a concerted effort to hire employees with disabilities find benefits in productivity and morale. A 2020 study by Accenture in partnership with the Association of American People with Disabilities (AAPD) and Disability: IN found that companies that proactively hired employees with disabilities increased their sales nearly three times compared to other businesses and their profits increased four times faster.<sup>3</sup> And some businesses have found that hiring employees with disabilities not only adds diversity to the workforce but also brings innovative problem-solving to the table.<sup>4</sup>

Note that a request for accommodations does not need to be in writing, but it is a good idea to create a paper trail: this applies to all requests, including employment and housing. Some employers require a specific form to accompany any request, but it is not mandated by law. The Michigan Administrative Guide acknowledges the lack of such a requirement but, nonetheless, offers a sample form which can be used for record-keeping.<sup>5</sup>

### **Do I have to hire an unqualified applicant because they are disabled?**

Just because an applicant has a disability, you don't have to hire them. The rule is that you must supply an accommodation to give the individual with the disability the same opportunities as their able-bodied counterpart. The applicant must be qualified, regardless of the disability. The State of Michigan Department of Labor and Economic Opportunity website explains that an applicant, disabled or not, must have the necessary skills and qualifications for the position.<sup>6</sup> Further, the US Department of Labor advises how a potential employer should conduct an interview with a candidate who has a disability. Pointers include being relaxed, making sure the applicant is relaxed, and focusing on the position requirements and necessary skills rather than the applicant's disability.<sup>7</sup> While medical examinations to verify ability to meet the duties of the job are illegal and discriminatory at the pre-employment offer stage, an offer can be extended to a candidate, conditional on the outcome of an examination *if required for the employees in*

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<sup>3</sup> <https://www.business.com/articles/hire-disabled-people/>, Last Accessed December 24, 2023

<sup>4</sup> *Id.*

<sup>5</sup> <https://www.michigan.gov/dtmb/-/media/Project/Websites/dtmb/Law-and-Policies/Admin-Guide/1600/165001-Reasonable-Accommodations-ADA-Title-I.pdf>, Last Accessed January 8, 2024

<sup>6</sup> <https://www.michigan.gov/leo/boards-comms-councils/mcsc/amicorps/inclusion-guide/chapter-materials/the-ada-and-reasonable-accommodation>, Last Access December 4, 2023

<sup>7</sup> <https://www.dol.gov/agencies/odep/publications/fact-sheets/focus-on-ability-interviewing-applicants-with-disabilities#:~:text=If%20the%20applicant%20has%20a%20known%20disability%2C%20either%20because%20it,th e%20pre%20employment%20offer%20stage>, Last Accessed December 4, 2023



*similar jobs*.<sup>8</sup> Remember however, failing to have valid reasons to not hire a disabled applicant who is qualified may amount to discrimination.

### **Is the accommodation going to bankrupt the business?**

The business owner should not be concerned about the cost of the accommodation. The US Department of Labor Office of Disability Employment Policy, in collaboration with the Job Accommodation Network, surveyed 3,528 employers in 2020 regarding the cost of providing accommodations to employees and 49.2% reported no cost.<sup>9</sup> If there is a cost, there is a financial exemption. The requested accommodation must be reasonable; in other words, it cannot cause *undue hardship* to the business. The EEOC defines “reasonable accommodations” as:

change[s] or adjustment[s] to a job or work environment that permit a qualified job applicant or employee with a disability to participate in the job application process, to perform the essential functions of the job, or to enjoy benefits or privileges of employment equal to those enjoyed by employees without disabilities....It is a violation of the ADA to fail to provide reasonable accommodation to the known physical or mental limitations of a qualified individual with a disability, unless to do so would impose an undue hardship on the operation of your business. Undue hardship means that the accommodation would require significant difficulty or expense.<sup>10</sup>

The EEOC continues to define “undue hardship” as “unduly costly, extensive, substantial or disruptive, or would fundamentally alter the nature or operation of the business.”<sup>11</sup>

### **Can I deny the requested accommodation?**

An employer has no right to deny a request for accommodations, other than if it would cause undue hardship. But a decision of the appropriate accommodation is an interactive negotiation. Examples of appropriate accommodations can be found at the US Department of Labor’s Job Accommodation Network (see below).

In evaluating a request, the employer must determine whether the accommodation disrupts the ‘essential functions’ of the job. Remember, requesting an accommodation is an interactive

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<sup>8</sup> *Id.*

<sup>9</sup> <https://www.dol.gov/general/topic/disability/jobaccommodations#:~:text=A%20job%20accommodation%20is%20an,to%20work%20schedules%20or%20responsibilities>.

<sup>10</sup> <https://www.eeoc.gov/publications/ada-your-responsibilities-employer#:~:text=Reasonable%20accommodation%20is%20any%20change,equal%20to%20those%20enjoyed%20by>, Last viewed 12/4/2023

<sup>11</sup> *Id.*

process, and the best person to know the needs of the employee is the employee who made the request.

Following are the considerations that should be addressed when an accommodation is requested:

1. Is the candidate qualified?
2. What are the 'essential functions' of the job?
3. Does the disability prohibit the employee from completing those functions?
4. Does the accommodation disrupt the 'essential functions' of the job?
5. Does the requested accommodation cause the business undue hardship?
6. Have you communicated with the employee to explore alternatives? (Remember, the request is a negotiation process in order to find an appropriate solution for all.)

There are tax incentives for hiring employees with disabilities, which makes it a win-win to hire persons with disabilities. Stay tuned for the next article discussing these tax incentives in an upcoming issue.

Some valuable resources to consider:

- The Job Accommodation Network, US Department of Labor Office of Disability Employment Policy ([www.askjan.org](http://www.askjan.org))
- The EEOC, Your Responsibilities as an Employer (<https://www.eeoc.gov/publications/ada-your-responsibilities-employer#:~:text=Reasonable%20accommodation%20is%20any%20change,equal%20to%20those%20enjoyed%20by>)
- US Department of Labor (<https://www.dol.gov/general/topic/disability/jobaccommodations#:~:text=A%20job%20accommodation%20is%20an,to%20work%20schedules%20or%20responsibilities.>)

## ***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)**

### **Council Spring-ish Conference**

- Friday, February 23, Kellogg Center, East Lansing

### **Council Meetings**

Note: The majority of Council meetings will now be held on the second Friday of the month at noon. The in-person meetings (with a zoom option) are still on Saturdays at 10 am.

- Friday, February 9, 2024, 12 pm - 2pm, Zoom  
Register in advance for this meeting:  
<https://us06web.zoom.us/meeting/register/tZAodOqsrDguGtEsRK2m4npl8HdW3XTT0FN>
- Friday, March 8, 2024, 12 pm - 2pm, Zoom  
Register in advance for this meeting:  
<https://us06web.zoom.us/meeting/register/tZUufuuhqjwuG9xJKrQMc2bCEX6MYY1sHsfX>
- Saturday, April 6, 10 am-12 pm - In person with Zoom option, Chalgian & Tripp Law Offices PLLC, 2040 Raybrook St SE, Suite 205, Grand Rapids, MI 49546
- Friday, May 10, 12-2 pm - Zoom
- Saturday, June 1, 10 am-12 pm - In person with Zoom option, Chalgian & Tripp Law Offices PLLC, 26211 Central Park Blvd., Ste. 200, Southfield, MI 48076
- No July Meeting
- Friday, August 9, 12-2pm - Zoom
- Saturday, September 7, 10am-12pm - In person with Zoom option Chalgian & Tripp Law Offices PLLC, 1019 Trowbridge Rd, East Lansing, MI 48823
- Annual Meeting – Thursday, October 10, 2024, Lunch break – DoubleTree by Hilton Hotel Bay City - Riverfront - In person only

#### Council Fall Conference

- October 9-11, Double Tree Hotel in Bay City

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

- March 20 - Lunch & Learn: Pay Attention to Assisted Living, Presenter, Eric M. Carlson-Justice in Aging, Los Angeles, CA. Webinar - 1-2pm EDT
- March 28 - The IRS, New Trust Modifications & Tax Consequences, Presenters, Mark D. Munson, CELA, CAP, Ruder Ware LLSC, Wausau, WI & Deirdre R. Wheatle Liss, CELA, Porzio, Bromberg, & Newman, PC, Morristown, NJ. Webinar - 2:30-3:30pm EDT
- May 1-4 2024 NAELA Annual Conference, Boston, MA

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

- February 15 - Drafting Estate Planning Documents, 33<sup>rd</sup> Annual. Livestream
- February 22 - Master Automatic Paragraph Numbering & Styles in MS Word. Livestream
- February 22 - Improve Your Processes & Drafting Efficiency with Technology. Livestream
- March 12 - Drafting an Estate Plan for an Estate Under \$5 Million. Livestream
- April 2 - Medicaid and Health Care Planning Update 2024. Livestream
- April 4 - Masters In Litigation: Persuasive Presentation Skills. Livestream

- May 15 - Using a Formula Clause to Gift a Closely Held Business Interest. Acme
- May 16-18 - Probate & Estate Planning Institute, 64<sup>th</sup> Annual, Acme
- March 5 - Negotiating and Drafting a Property Settlement Agreement. Livestream
- March 12 - Drafting an Estate Plan for an Estate Under \$5 Million. Livestream