

Missouri Chapter NAELA



A quarterly newsletter provided by the Missouri Chapter National Academy of Elder Law Attorneys, Inc.

Fall Edition 2009

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Message From The President

Welcome to our new members and howdy to those who have been with us for a while.

My first order of business is to thank Rudy Beck for his leadership through the past year. Thanks too, to all the Board members for their dedication to serving the best interests of our members and to helping to improve legal services for Missouri's older adults and those with special needs.

I want to encourage you to forward your suggestions for how our Chapter may improve services to you. I welcome your input so that, together, we can continue to make our Chapter "the foremost organization of lawyers recognized as experts and committed advocates for the elderly and disabled in Missouri."

Our goal is to bring to you - the members of the Missouri Chapter of NAELA - the latest in legal developments, events and issues that affect attorneys practicing in Missouri and their clients. We do this through our list-serve discussions, our meetings, our CLE programs, and our newsletter, but we need your help. We need input and participation from the people that matter most - YOU! As most of you know, our MoNAELA list-serve is one of the best to be found anywhere. The conversation is always informative and the manner in which ideas are freely shared by and among members is truly extraordinary.

What little expertise I possess in the area of elder law I owe in large part to the training that NAELA programs provide and the thoughtful mentoring I have received from fellow Missouri Chapter members. As the NAELA 2009 Fall Program in New Jersey draws near, I am reminded of the generous past contributions that have been made by our Chapter members to bring quality educational programs and nationally-recognized speakers to Missouri. Our programs always provide practical training on issues that are regularly faced by elder law practitioners.

We who work in the elder law field are fortunate to count among our colleagues many lawyers who are generous with their time and knowledge. This is really what NAELA is all about. My involvement in the Chapter has been particularly rewarding as I have developed relationships with some terrific people and have always reaped WAY more than I have sown. Contributing to the Chapter's work will enable you to grow professionally, to foster relationships with lawyers who will lend support when you need advice, and to provide the highest-quality advocacy for your clients.

Our standing committees and chairs are as follows:

Public Relations Committee - Scott King • Program/Education Committee - Dianne Hansen
Membership Committee - Tim Murphy • Public Policy Committee - Colleen Nunnally
Publications Committee - Christine Gilsinan • Advocacy Support Committee - Stephen Stark

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Message from the President continued...

I encourage each and every Member to contact at least one of these committee chairs and get involved.

In addition, I have been charged with organizing a committee of MoNAELA members to participate in a project sparked by **Marta Fontaine of the Missouri Dept. of Health and Senior Services (Phone: (573) 526-3246; email: marta.fontaine@dhss.mo.gov)**. The Department has received a Grant entitled "Model Approaches to Statewide Legal Assistance System." It seeks to create for elders and their families" (1) a statewide 800 number help-line; (2) an online/web-based help-line to provide basic legal information; (3) a clearinghouse for pro bono cases, and (4) a referral service, all of which would be coordinated with the caller's local Area Agency on Aging. This is a very worthwhile project and could potentially have an impact on our practices. We have been invited to participate in shaping this project, and we do not want to waste this opportunity. **Please contact me directly to represent our organization as a stakeholder in this important project. More details below under "Grant."**

Keep up the good work on behalf of the elderly and disabled through out the state of Missouri.

*Keith W. Brunstrom, President
Missouri NAELA*

GRANT

Missouri has been awarded one of the Model Approaches to Statewide Legal Assistance Systems grants. Marta Fontaine, APS Planner III, State Legal Services Developer, DHSS, Division of Senior & Disability Services, has asked for participation from representatives of the MO Bar, *MO Chapter of the National Academy of Elder law Attorneys*, Legal Aid providers, MO Alliance of Area Agencies on Aging, Governor's Advisory Council on Aging, Office of the State Ombudsman, MO Protection & Advocacy, MO Association of Public Administrators, MO Silver Haired Legislature, MO Department of Health & Senior Services and several other interested individuals and agencies.

Although this newsletter comes too late for the first meeting on Friday, October 2, 2009, there will be **another such meeting in on January 22, 2010, 10-4 pm**, to engage partners in the legal community and aging network and allow for input into the design of these helplines and other services. The overall objective is to design and implement a statewide toll free senior legal helpline and an online senior legal helpline. These would

allow for Missouri seniors and their families to access information on legal issues and referrals regardless of whether they are seeking full-cost, reduced, or free legal assistance.

An anticipated outcome is that the Area Agency on Aging will become a source of referrals for lawyers and other professionals and will operate an elder help line (by telephone and online/web-based).

To help get this project off the ground, please consider signing up for one of the work groups already established by contacting **Keith Brunstrom (Phone: 573-657-5755; email: kwbrunstrom@aol.com)**

The three workgroups (and some of their tasks) are:

1. Online Helpline Content/Information Development

- Consider a password protected area of the online helpline for attorneys to communicate on senior legal issues and an area to assist pro bono/volunteer attorneys with resources to support their representation of low-income seniors (or links to existing resources for communication and support)

- Develop disclaimers concerning the helplines.

- o Information is offered, not legal advice nor representation

- o Neither email nor phone contact establish an attorney/client relationship

2. Pro Bono Recruitment, Incentives, and Services

- Compile existing volunteer lawyer projects that may provide information and services relevant to seniors...areas of availability, how long a project is funded, etc.

- Gather information on existing pro bono recruitment efforts both in MO and other states.

- Consider incentives for volunteer lawyers

3. Intake/Referral (or Contact) Form Design & Development

- Information to collect

- o Identifiers/demographics

- o Acceptance of third party requests

- o Income/asset information

- o Legal question/issue

- Explore Email Q & A?

CHAPTER GENERAL MEETING AND ETHICS CLE CREDIT

The next general meeting of the Missouri Chapter of NAELA will be held on **Friday, January 29, 2010 beginning at 10:00 a.m. at Courtyard by Marriott in Columbia, MO** (located at 3301 LeMone Industrial Boulevard, Columbia, MO 65201).

Speakers will be:

- (1) Carol Scott (State Long Term Care Ombudsman) whose topic is “intimacy in the nursing home;” and
- (2) Lois Zerrer who will reprise her “Ethical Considerations Related to Some Hot Topics in Elder Law” presented on September 25, 2009 at the Missouri Bar Judicial Conference and Annual Meeting, held in St. Louis (**for one hour CLE ethics credit**).

SEEKING NOMINATIONS FOR THE ANNUAL SENIOR AWARD

Each year MONAELA recognizes a Senior who has engaged in activities that benefit the elder community. Past recipients include a Senior Program Director from the City of Florissant and a volunteer from a skilled nursing facility. The honoree is presented with a plaque at our **winter/spring gathering, which will be held on January 29, 2010** (see above).

The only requirement is that the individual be at least 65 years of age and nominated by a MONAELA member. Consider whether the candidate has contributed to society and/or senior citizens by sustained exemplary service and/or an outstanding single achievement or public service and whether, by the candidate’s actions, other seniors are encouraged to make meaningful contributions to society.

Please submit your nominee to Scott King, Chair of our Public Relations Committee (scott@scottelderlaw.com). Or, for additional information contact Keith Brunstrom directly (telephone: 573-657-5755 kwbrunstrom@aol.com).

The deadline for nominations is December 1, 2009.

PLANNING BEGINS NOW FOR NATIONAL HEALTH CARE DECISIONS DAY IN APRIL

National Health Care Decisions Day will be April 16, 2010. The third annual event is being spearheaded by Nathan Kottkamp, a Richmond, VA, lawyer. Our members can assist people with executing the directives (for example, the free Missouri Bar form) and can also

listen to people as they verbally process the thinking before or after the directives are done. Beth Traudes, Consumer Affairs Chair of the Missouri End-of-Life Coalition is coordinating Missouri’s event this year.

NAELA has committed to participating in this event and MoNAELA members are encouraged to help organize and participate in advanced care planning panels and events.

The effectiveness of our efforts would be enhanced if the Chapter coordinates its efforts with the state coordinator, other health care providers and the Elder Law Section of the Missouri Bar.

Would a member please “step forward” to coordinate? If interested, please contact Keith Brunstrom (**Phone: 573-657-5755; email: kwbrunstrom@aol.com**).

NEW LAW: STANDBY GUARDIAN

By posting to the valuable MoNaela Listserv, our colleague, Reg Turnbull, informed us of the change in Missouri law, authorizing a “standby guardian,” a change which MoNaela supported.

The provision had been discussed frequently in years past and was included in House Bill 154 which passed the legislature and went into effect on August 28, 2009. The bill was added to the bill originally just covering “Foster Care Education Bill of Rights.”

It provides a process that a parent could use (by a will or other writing conforming to the requirements of 475.046.1) to prevent a gap in guardianship for minors and incapacitated persons for up to 60 days if a custodial parent dies, is adjudicated incapacitated or consents.

Section 475.010 adds or modifies definitions of “custodial parent” in subdivision (4); “guardian,” in (7); “parent” in (14); “seriously ill” in (18); “standby guardian” in (20), and “ward” (22).

Section 475.046 specifies the procedures for appointing a standby guardian and how long they can serve before being appointed the “guardian.”

In amended section 475.105, statutory forms for Letters of Appointment are specified for “standby guardians” for minors and incapacitated persons.

Thank you, Reg.

BROCHURE REMINDER

Missouri NAELA Members can order additional copies of “**The Missouri Elder Law Attorney**” brochures directly from the printer. Contact Karen Klar, Graphic Connections, 174 Chesterfield Industrial Blvd., Chesterfield, MO 63005. Phone 636-519-8320.

CONTINUING (OUR) LEGAL EDUCATION

Two recent happenings are of note:

1. The Missouri End-of-Life Coalitions' Fifth Policy Summit was held on October 1, 2009, in Jefferson City, MO. Our colleague, Reginald Turnbull, who chairs the Missouri End of Life Coalition, addressed the group about "How to Implement the New Out-of-Hospital Do Not Resuscitate Order Rule—19 CSR 30-40.600." Lori Kramer Clark of the Midwest Transplant Network spoke about "Implementation of the Missouri Revised Anatomical Gift Act". And Professor David M. English discussed proposed health care surrogacy legislation for the 2010 legislative session, which would authorize surrogates to make decisions for incapacitated persons without court appointed guardians or health care agents under power of attorney.

2. Our colleague, Steven Stark, attended the Adult Protective Services Training (sponsored by DHSS) held from October 7 – 9 at TanTarA. The training included presentations on "Strategies for Exploitation and Fraud Investigations", "Interviewing Victims of Elder Abuse" and "Recognizing and Responding to Cases of Undue Influence"

For information on future summits, contact marta.fontaine@dhss.mo.gov

IN MEMORIAM

A former member of the Missouri Chapter, Elven "Gus" Bauman of Belton, MO, died on October 4, 2009. He battled Parkinsons for many years. After becoming a lawyer late in life, he became very passionate about elder law. Your Chapter's Board of Directors has authorized contributing \$100 in Gus' honor to the Parkinson's Society.

His obituary is at:

<http://www.legacy.com/obituaries/kansascity/obituary.aspx?n=gus-bauman&pid=134107871>

HEALTH CARE REFORM: TRUTH vs. FICTION

Last but not least (by any means). If you want succinct and truthful responses to many of the fictional statements being communicated to our clients about health care reform, check out this memo prepared by the US Senate Special Committee on Aging:

<http://www.aging.senate.gov/issues/healthcare/factvsfiction.pdf>

Better yet, print it out and pass it around (reception area?) It appears below.



Health Care Reform: FACT vs. FICTION

Brought to you by the U.S. Senate Special Committee on Aging

The Senate Special Committee on Aging has a responsibility to represent the concerns of America's seniors. As its Chairman, I will work to make sure that changes to our health care system are in seniors' best interests. Your representatives in Congress have been working for months to put together a plan for health reform. Though progress has been steady, as of August, there are still several proposals in flux. ***Please be aware that Congress has not yet formulated one bill, and that no final decisions have been made about what will be included in health reform.***

Nevertheless, there are countless rumors swirling about "the health care bill," many of which are meant to scare older Americans. ***A good rule of thumb is that if it sounds too ridiculous to be true, it probably is.*** This document has been prepared by the Senate Special Committee on Aging to set the record straight. Thank you for your interest.

A handwritten signature in black ink that reads "Herb Kohl".

U.S. Senator Herb Kohl (D-WI)
Chairman

FACT vs. FICTION

Health care reform will replace Medicare and Medicaid.

This is FICTION.

Health reform will not replace Medicare or Medicaid. In fact, the proposals to date work to strengthen both programs and improve their systems.

Health care reform will cut Medicare and take away choices for seniors.

This is FICTION.

Under health care reform, Medicare will continue to offer seniors the choices they need. Health care reform will also include provisions to eliminate waste, fraud, and abuse in Medicare. But this will not keep you from getting procedures that you need, when you need them.

The government is creating a "Czar" who will decide what treatments are best for certain conditions and force physicians to treat patients in a certain way.

This is FICTION.

The House proposal includes provisions to fund research that will compare treatments for certain conditions. This type of unbiased, fact-based research will be available to both patients and doctors to help them to make the best individual treatment decisions for each person. In addition, the proposal also explicitly prohibits "denying or rationing" medical care based on this research.

The House health care reform bill would require doctors to give seniors "suicide counseling."

This is FICTION.

The House proposal does not tell seniors how to die, nor urge doctors to do so. The proposal empowers seniors to voluntarily make their own decisions on end-of-life care in advance, in consultation with a trusted physician. Part of planning for the future could be creating a living will that includes your wishes for the end of life, so that your instructions are followed to the letter. No matter what your wishes are, the health reform proposal will not take any of those choices away from you. In fact, it helps to make sure that your choices are respected.

FACTS ABOUT MEDICARE

Medicare provides older Americans 65 and older with access to quality health care at a cost that is affordable. Health care reform will not dissolve or radically change Medicare.

Most seniors are happy with Medicare. In fact, Medicare boasts a higher satisfaction rate than private insurance. The reform proposals to date will work to strengthen Medicare, and will not make any significant changes to the way seniors receive their health care services.

Health care reform will lead to rationing.

This is FICTION.

There's no bill or proposal in Congress that would ration health care. We do need to reexamine the way that we pay for health care in this country. Thus far, the proposals are focused on paying for value and quality of care over volume of services. Under our current system, some providers are incentivized to run duplicative tests and over-order expensive treatment, though these procedures might not be what the patient needs to get better. An improved health care system will lead to smarter health care choices, but that does not mean it will limit your options.

If you have private insurance now, your care is already limited when your insurance company decides what procedures to pay for and which doctors to cover. Insurance companies can deny you coverage if you have a pre-existing condition. And they can make payments and premiums prohibitively high for American families. Congress is working to minimize these denials and barriers to quality health care.

The House health care reform bill would make private health insurance illegal or would eliminate it in five years.

This is FICTION.

None of the proposals being considered by Congress would make private health insurance illegal. In fact, the House proposal specifically allows people to keep their current private health insurance. Those who are uninsured would be allowed to choose from a range of private insurance plans as well as a new public insurance option.

Health care reform will require people to sign up for government health care, especially if they don't have any insurance right now.

This is FICTION.

The health reform proposals being considered thus far would allow people to choose between a menu of private health insurances and, under some proposals, a government-run "public option." It is important to remember that the "public option" would be just that: an option. Seniors who already have health coverage would not need to worry about switching insurance at all, and Medicare will stay intact. Congress will preserve your ability to choose your health insurance plan, your doctor, and your hospital.

Illegal immigrants would receive government-funded health coverage if health reform passes.

This is FICTION.

The House proposal explicitly forbids spending federal dollars on illegal immigrants. On Page 143, Line 3, Section 146, it says: "No Federal Payment for Undocumented Aliens. Nothing in this subtitle shall allow Federal payments for affordability credits on behalf of individuals who are not lawfully present in the United States."

Members of Congress refuse to give up their health plans to take the public option.

This is FICTION.

Reforming our nation's health care system is meant to give every American access to quality, affordable health care - just like Members of Congress have. In fact, one of the Senate proposals would require members of Congress to join the public option, giving them the opportunity to show Americans the trust they place in government-run health care.

Health care reform won't go into effect until 2013—in five years.

This is PARTIALLY FACT.

Congress recognizes that it takes time to change the health care system. The final legislation will be phased in over time. Though some of the changes would occur shortly after the bill is passed, others may take several years.