Report from the Chair

By Mary M. Aquino, Chair

Spring has arrived and the Elder Law and Disability Rights Section Council members and committees have been busy providing section members with legal education programs, planning for the MSBA annual meeting, working with other MSBA sections, tracking legislation and more. Looking forward, there are several informational events planned for ELDR section members in the coming months. We hope you can join us for at least one, if not all, of the upcoming meetings, events, and trainings.

In the fall of 2017, the ELDR Section participated in and hosted several events. Lisa Sarro and Elena Boisvert attended a Money Smart for Older Adults training sponsored by the MSBA Business Law Section. This was a "train the trainer" event to train attorneys to present to older adults at senior centers on financial literacy. The training included tips on how to prevent common frauds, scams, and other types of elder exploitation. Thanks to Adam Zimmerman for chairing the Housing Options CLE in October which received high marks from attendees. Another excellent presentation was organized by Larry Adeshek for the general section meeting in December. Toby Edelman from the Center for Medicare Advocacy and Section Council member Kandace Scherr spoke about Medicare Rehabilitation Benefits Advocacy and Appeal. Materials from that presentation will be available on the ELDR Section web page at www.msba.org/elder.

Tracking legislation that affects older adults and persons with disabilities continues to be an important role of the Section. While working with Morris Klein in monitoring legislation for 2018, Elena Boisvert also planned the Joint NAELA/MSBA ELDR Section Annual Legislative meeting held on February 13, 2018. The meeting was well attended and provided a wonderful opportunity for members to meet with colleagues and state representatives to discuss the 2018 legislative initiatives affecting older adults and persons with disabilities. Legisla-

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Appreciation goes to our Liaisons to other MSBA Sections. Stephen Elville, Morris Klein, and Ben Woolery have done a terrific job of keeping us informed and working with the Estates and Trusts Section. Larry Adashek continues his good work with the Veterans and Military Law Section. Once again, the ELDR Section is a sponsor for the Annual Veterans Legal Assistance Conference and Training on June 1, 2018. Look for the registration announcement coming soon. Sarah Steege, as liaison for the Health Law Section, was instrumental in writing a letter on behalf of individuals and organizations, including the ELDR Section Council, opposing a proposed rule change that would enable hospitals to seek special temporary guardianships. Because of her efforts, the proposed rule was sent back to the work group for further discussion.

The MSBA Annual meeting will be held in Ocean City, Maryland from 13-16 June 2018. The 2018 meeting will feature an entirely new format. Ann Goodman, chair for the annual meeting program, and Daniel Tavares, have submitted the ELDR Section program topic , which will focus on financial elder abuse. Panelists from the Office of the State’s Attorney, Office of the Attorney General, and an attorney from the Federal Trade Commission, will discuss signs of financial elder abuse to heighten awareness of attorneys when representing clients. More details about the annual meeting will be forthcoming. In addition, Vice Chair Steve Elville and his Nominating Committee members Morris Klein, Kandace Scherr and Ben Woolery are in the process of completing the slate of section council members to be approved at the Annual Meeting.

Many thanks to Camilla McRory for her dedication and many hours of excellent work in her dual roles as Committee Chair of Publications and Newsletter, and in her role as Chair of the ELDR Section Technology/Website committee. Thank you to all of the Section Council members including William Gering, Emmett Irwin, Karen Miller, Michael Stelmack, and Jeff Myers for their participation at monthly meetings and more. Finally, thank you to the 2017-2018 officers: Vice Chair Stephen Elville, Secretary Ben Woolery, and Treasurer Mary Jo Speier for your support and commitment. It has been an honor for me to serve as Chair this year and to work with such fine attorneys.

Mary Aquino
MSBA Elder Law and Disability Rights
Section Chair, 2017-2018
New Guardianship Rules

By Angela Grau

January First 2018 was the effective date for changes to Maryland court rules that apply to guardianship proceedings, court-appointed guardians, and attorneys. The rule changes were adopted in response to the May 2016 recommendations of the Guardianship Work Group. The goals of the recommendations are to improve the court guardianship process, and to achieve best practices by Maryland courts in the administration of guardianships of minors and vulnerable adults. The changes include:

• Training and eligibility requirements for attorneys appointed to represent minors and alleged disabled adults, who are the subjects of guardianship proceedings;
• Orientation and training requirements for guardians of the person and property;
• Criteria for courts to consider when determining whether good cause exists to appoint a guardian who has been convicted of a disqualifying offense; and
• Criteria for courts to consider when determining whether to require a guardian of the property to post a bond.

A comprehensive list of the specific amendments to the Maryland Rules, the impact on guardianship practice, and the new resources available is included in a piece entitled “Maryland Guardianship: New Rules and Resources,” which follows. This list was prepared and reprinted with permission by Nisa C. Subasinghe, Attorney with the Department of Juvenile and Family Services of the Administrative Office of the Courts, and staff attorney for the Guardianship Work Group.

In addition, the Maryland Judiciary has created a new “Maryland Guardianship” section on its website, which includes an orientation video for prospective guardians, links to training programs, checklists for guardians, and new court forms. The Maryland Guardianship section can be found at www.mdcourts.gov/family/guardianship/courtappointedguardians.html.

The National Center on Law and Elder Rights (NCLER)

For your information: The National Center on Law and Elder Rights (NCLER) is a centralized, one-stop shop for legal assistance, providing free legal training, case consultations, and technical assistance on legal systems development to the legal and aging and disability network. NCLER is a program of the Administration on Aging. Justice in Aging administers NCLER through a contract with the Administration for Community Living.

Case consultations are a core NCLER service and are provided to attorneys assisting older adults. NCLER attorneys are available to provide one-on-one assistance to attorneys and information on the following: Health/LTSS, Economic Security, Guardianship, Advance Planning, Elder Abuse, Supported Decision-Making, Consumer Protections, and Housing.

Justice in Aging, American Bar Association Commission on Law and Aging, and National Consumer Law Center attorneys are the NCLER substantive experts that provide this case consultation assistance.

To request case consultation help, please e-mail ConsultNCLER@acl.hhs.gov with information about the type of help you are seeking.

To join our NCLER e-mail list, so you will receive information on upcoming Legal Trainings and alerts on emerging legal matters, you can join here: ncler.salsalabs.org/nclersignup.

Our full Legal Training Curriculum and resources on Legal Systems Development are available at our website: ncler.acl.gov.
Medical Assistance and other long-term care matters

HB0782 / SB0550 Maryland Achieving a Better Life Experience (ABLE) Program - Death of a Designated Beneficiary. Effective 01 June 2018
Education Article 18-1903, 18-1905, 18-1909, 18-19A, 18-9B, and 18-19C
Permit transfers of funds from traditional 529 plans to ABLE accounts; provide that, upon the death of an ABLE beneficiary, the funds may be transferred to the estate of the beneficiary or to an ABLE account for another eligible beneficiary; and that unless otherwise required by federal law, the State is prohibited from seeking medical assistance reimbursement from an ABLE account.

HB0946 Long-Term Care Insurance - Nonforfeiture Benefits Insurance Article 18-116.1
 Provides that an insured who has paid premiums for 20 years is entitled to lump sum benefit of all premiums paid minus all benefits received, if insured cancels policy within specific time period of premium increase.

HB1215 / SB0630 Nursing Homes - Partial Payment for Services Provided Effective 01 July 2018, sunsets 30 June 2020
Health -General Article 15-149
Allows nursing homes to claim 50% payment if Medical Assistance application has been pending for at least ninety days.

HB1280 / SB 0660 Maryland Medical Assistance Program - Rare and Expensive Case Management Program - Waiver Amendment Effective 01 June 2018

HB1682 / SB0835 Maryland Medical Assistance Program - Collaborative Care Pilot Program Effective 01 July 2018 sunsets 30 June 2024

SB0284 Maryland Medical Assistance Program - Dental Coverage for Adults Effective 01 July 2018
Requires MDOH to apply to CMS no later than 01 September 2018 for a "§1115 HEALTHCHOICE DEMONSTRATION WAIVER TO IMPLEMENT A PILOT PROGRAM TO PROVIDE LIMITED DENTAL COVERAGE TO ADULT PROGRAM RECIPIENTS."

Elder Abuse Prevention

HB1506 Office of the Attorney General - Securities Commissioner - Asset Recovery for Exploited Seniors Corporations and Associations Article 11-209
Authorizes the Securities Commissioner of the Division of Securities of the Office of the Attorney General to bring a civil action for damages against a person who commits financial elder abuse per Criminal Law Article 8-801, and to recover costs for the Attorney General (unclear if that includes attorney fee).

SB0386 Maryland Nursing Home Resident Protection Act of 2018 Effective 01 July 2018.
Health-General Article 19-1408 and 19-1408.1
Requires MDOH to investigate complaints of nursing home abuse within ten days unless the complaint alleges "immediate jeopardy" to the resident, then within 24 hours if possible but otherwise within 48 hours.

Guardianship

HB0033 Guardianship of Disabled Persons - Voluntary Admission to Mental Facility
Current law prevents a person who has a Guardian from voluntarily committing her or himself to a mental hospital, even when everyone including the Guardian and the mental hospital, want the person to be admitted voluntarily. This bill will solve that problem.

HB1483 Duties of a Guardian of the Person - Petition for Visitation
To say this bill is a shadow of its original self, is an insult to shadows everywhere. Virtually the entire original bill was deleted, leaving only Estates and Trusts 13-708(b) (4):
"IF IT IS IN THE BEST INTEREST OF THE DISABLED PERSON, THE 21 DUTY TO FOSTER AND PRESERVE FAMILY RELATIONSHIPS INCLUDING, AS 22 APPROPRIATE, ASSISTING TO ARRANGE VISITATION

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AND COMMUNICATION BY 23 TELEPHONE CALLS, PERSONAL MAIL, AND ELECTRONIC COMMUNICATIONS."

HB1635 / SB0947 Mental Health Law - Involuntary Admissions - Requirements and Procedures
This bill adds the below paragraph to Health-General 10-632: "(F) THE HEARING OFFICER MAY NOT ORDER THE RELEASE OF AN INDIVIDUAL WHO MEETS THE REQUIREMENTS FOR INVolUNTARY ADMISSION UNDER SUBSECTION (E)(2) OF THIS SECTION ON THE GROUNDS THAT THE INDIVIDUAL WAS KEPT AT AN EMERGENCY FACILITY FOR MORE THAN 30 HOURS IN VIOLATION OF § 10-624(B)(4) OF THIS SUBTITLE."

One suspects this was written in response to some specific situation, but the actual reason is unknown to this writer.

SB 1239 Appointment or Designation of a Standby Guardian - Adverse Immigration Action. Emergency bill effective upon enactment.
Estates and Trusts 13-901, 13-904, and 13-907
This bill adds to the situations in which a parent can designate a stand-by Guardian, if the parent:
"IS SUBJECT TO AN ADVERSE IMMIGRATION ACTION AND 21 CONSENTS TO THE BEGINNING OF THE STANDBY GUARDIAN’S AUTHORITY."
The bill also defines "Adverse Immigration Action."

Estates and Trusts

Conspicuous by its absence from successful legislation, is the Elective Share bill. A strong argument can be made that every year without the Elective Share bill is good for our clients. Despite no statistics on the magnitude of the (alleged) "problem" the bill is intended to "solve," the bill will undoubtedly return yet again in the 2019 legislative session.

HB0308 CH0021/ SB0646 CH0015 Maryland Estate Tax - Unified Credit
Tax-General Section 7-309(b)
The Maryland estate tax (MET) will remain decoupled from the Federal estate tax (FET) exclusion amount. Beginning 01 January 2019, the MET exclusion amount will be $5 million, plus any Maryland deceased spousal unused exclusion amount ("DSUEA"). The Maryland DSUEA is the amount of the Maryland exclusion amount in effect at the date of death of the first spouse, minus the taxable estate of the first spouse. Portability is available if the first spouse dies before 2019 or the estate of the first spouse contained no property with a Maryland taxable situs, and the portability election was made on the FET return of the first spouse; and if the first spouse dies dying after 2018 with Maryland taxable situs property, the election is made on a timely filed MET return.

HB0444 / SB0348 Estates and Trusts - Contesting Validity of Revocable Trust - Limitation HB0474 I SB1014 Estates and Trusts - Breach of Trust Action - Limitation Period
This bill is so short and simple that it is clearest simply to provide the entire text.
Estates and Trusts 14.5-605
" A PERSON SHALL COMMENCE A JUDICIAL PROCEEDING TO CONTEST THE VALIDITY OF A TRUST THAT WAS REVOCABLE AT THE DEATH OF THE SETTLOR WITHIN THE EARLIEST OF:
(1) 1 YEAR AFTER THE DEATH OF THE SETTLOR; OR

This reader of the English language does not know if this is the intent, but the English words mean that if a copy of the Trust and of the required notice, is sent to potential challengers immediately after it the Trust is created (or at any other time during the life of the Settlor), then the right to challenge the Trust will terminate six months later, whether the Settlor is living or not. This could be an effective way to eliminate challenges to Trusts.

Another bill that is so short (though not necessarily so simple) that it is clearest simply to provide the entire text.
Estates and Trusts 14.5-107
"THE MEANING AND EFFECT OF THE TERMS OF A TRUST ARE DETERMINED BY:
(1) THE LAW OF THE JURISDICTION DESIGNATED IN THE TERMS UNLESS THE DESIGNATION OF THAT JURISDICTION’S LAW IS CONTRARY TO A STRONG PUBLIC POLICY OF THE JURISDICTION HAVING THE MOST SIGNIFICANT RELATIONSHIP TO THE MATTER AT ISSUE; OR
(2) IN THE ABSENCE OF A CONTROLLING DESIGNATION IN THE TERMS OF THE TRUST, THE LAW OF THE JURISDICTION HAVING THE MOST SIGNIFICANT RELATIONSHIP TO THE MATTER"
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AT ISSUE."
This could be an invitation to much Conflicts of Law litigation, so the key is to make the best choice of law designation in the Trust itself.

HB0769 Estates and Trusts - Maryland Uniform Transfers to Minors Act - Award of Reasonable and Necessary Expenses
New Estates and Trusts 13-323.1
This bill permits a court to award “reasonable and necessary expenses” for prosecuting or defending an action under MUTMA.

SB0292 Estates - Administration Exemption - Transfer of Motor Vehicle and Boat Titles
If the only assets titled in the sole name of the decedent with no beneficiary designation consists only of (a) one or two cars, or (b) a boat worth less than $5,000, administration of a probate estate is waived, if the surviving spouse is the only heir or legatee. So single clients are still strongly advised to use the (not very good but still slightly better than nothing) MVA Transfer on Death procedure for any motor vehicles owned.

HB0948 / SB0372 Estates and Trusts - Transfer From Revocable Trust - Exemption From Taxes and Fees Effective 01 July 2018
Estates and Trusts 14.5-1001
These bills exempt from recordation and transfer tax, transfers of real property from a revocable trust to a beneficiary because of the death of the settlor; and prohibit imposition of the motor vehicle excise tax in the same situation.

Restoration of Rights in Adult Guardianship

How frequently and under what circumstances are adult guardianships terminated and rights restored, supporting self-determination and choice? What policies and practices should guide procedures in restoration of rights?

The American Bar Association Commission on Law and Aging (ABA Commission) sought to shine a light on the backwater and little-known process of restoration with a project funded by The Greenwall Foundation and the Borchard Foundation Center on Law and Aging, and in collaboration with the Virginia Tech Center for Gerontology.

The ABA Commission is pleased to announce the release of the project findings in a report entitled Restoration of Rights in Adult Guardianship: Research & Recommendations.

The Report is based on comprehensive legal research of state statutes and case law; court file research in four states; and perceptions and recommendations from a September 2016 interdisciplinary consensus-building Roundtable. The 69-page Report presenting the legal and empirical findings, as well as the results of the Roundtable discussion, is on the website of the ABA Commission at www.americanbar.org/content/dam/aba/administrative/law_aging/restoration%20report.authcheckdam.pdf.