

November/December 2020 Volume 32 Issue 7

MEMORIALS SESSION — 2020

Please join us Friday, November 20th at 2:00 p.m. to celebrate the lives of those lawyers who have passed on.
This year's Memorials will take place remotely via Zoom and YouTube Live.

— HONORING —

William B. Barte	James J. Lawton III
James R. Berens	Ronald Eugene Martell
Kent Edwin Charpentier	Paul F. McCloskey
Augustus "Bill" Wilson Clapp III	Bert J. McKasy
William Cosgriff	James P. Nelson
Gary Davis	Paul Nesvig
Hon. Roland Faricy Jr.	Kenneth Lloyd Port
Raebern B. Hitchcock	Hon. Steven E. Rau
Russell "Russ" J. Jensen	Hon. Thomas W. Walsh

For more information and access links, please visit the RCBA website calendar at www.ramseybar.org.

If you know of any Ramsey County attorneys or judges who has passed away whom you would like to see included in the 2021 special session of court, please contact Sharon Elmore at 651-789-3756 or selmore@mnbars.org.



Recent Changes to Minnesota's Guardianship Law

After a collective effort of stakeholders in the area of guardianship/conservatorship law,ⁱ on May 16, 2020, Gov. Tim Walz signed the Guardianship Modernization Act, SF3357, which updated Minnesota's guardianship/conservatorship (hereinafter collectively referred to as "guardianship") lawⁱⁱ by incorporating less restrictive alternatives to guardianships, updating definitions, adding privacy protections for persons subject to guardianship proceedings, improving notices in guardianship proceedings, clarifying powers/rights in guardianship process, and refining guardianship procedures.ⁱⁱⁱ These changes, which went into effect August 1, 2020, were long overdue and will result in fewer people subject to guardianship.

When is a Guardian appointed?

The statutory definition of "incapacity" previously resulted in guardianship as the default legal result for these persons. Now, an incapacitated person needs a guardian when that person is impaired to the extent that he or she lacks sufficient understanding or capacity to make personal decisions, and cannot meet personal needs for medical care, nutrition, clothing, shelter, or safety, even with appropriate technological and *supported decision-making assistance*.^{iv} With the statutory updates, incapacitated persons can avoid guardianship in some cases. Rather than basing a guardianship finding solely on a diagnosis-based determination of the need for a guardianship, the Modernization Act pivots to a functional-based assessment. The incapacitated individual must not only have a diagnosis of an incapacitating condition but also not have other assistance such as *supported decision making or other less restrictive alternatives* available to them. In updating the statute, state law now does not define a person as incapacitated if their unmet needs can be addressed in some way other than through guardianship, such as through a Supported Decision-Making Agreement, Health Care Directive, or community or residential services.

What is supported decision-making? Supported Decision Making is assistance—from one or more individuals of a person's choosing—in understanding the nature and consequences of potential personal and financial decisions. In Minnesota, practitioners have begun using Supported Decision-Making Agreements for clients which identify individual "supporters," such as family members, who will assist the incapacitated person. Although these Agreements are not formally codified under Minnesota law, the courts already have begun to recognize these agreements as a valid less restrictive alternative. This assistance enables the individual to make those personal and financial decisions. Supported decision-making recognizes that adults with neurocognitive disorders *and* young adults with disabilities may make informed decisions and are a less restrictive alternative to guardianship.

In terms of less-restrictive alternatives and to reduce unnecessary guardianships, if a guardianship is established for someone under age 30, their guardianship automatically expires after 72 months. Time-limited guardianships for individuals ages 18-30 is a groundbreaking change, unique in this country. Minnesota is the first state to codify the time-limited guardianship. Young adults may have a period of incapacity but relatively quickly respond to life-skill training, medication, or achieve success through a Supported Decision-Making Agreement. Accordingly, their needs and skills should be reevaluated not less frequently than every 5 years.

When is a Conservator appointed?

Individuals who cannot manage their property and business affairs because of an impairment restricting their ability to obtain and evaluate information or make decisions, even with appropriate technological assistance need a conservator to assist them in their financial affairs.^v The person owns assets which may dissipate unless management is provided for support, care, education, health, or welfare of the person and the identified needs cannot be met by less restrictive means including, but not limited to, use of appropriate technological assistance, supported decision making, social security representative payee, trusts, banking or bill paying assistance, or appointment of an attorney in fact.^{vi}

With the new law, before a conservator may be appointed, the court must make specific findings that *less restrictive alternatives* do not work. The Modernization Act recognizes that someone with moderate disabilities may be able to appoint an attorney-in-fact under a power of attorney, have a Social Security Representative Payee, or obtain banking or bill paying assistance. Prior to the update, petitioners have been required to prove less-restrictive options have been unsuccessful. Now, however, petitioners must specifically detail how long alternatives were unsuccessfully tried and the court must be satisfied that the less restrictive alternative will not protect the person.

Additional Modernization Act Updates

Definitions Updated: The words "Ward" and "Protected Person" still exist in our statutes for the purpose of maintaining the validity of existing documents and court orders, but now those terms are replaced by "Person subject to guardianship" and "Person subject to conservatorship," respectively.

Privacy Protections: Although the new law requires that a portion of guardianship pleadings be filed confidentially under a Bill of Particulars, at the time of this writing, the Supreme Court is reserving

the right to make a determination of whether these pleadings should remain confidential. Practitioners are waiting for final instructions so they know whether a person in need of assistance may keep their medical and financial history confidential when seeking the court's determination of guardianship and/or conservatorship.

Communications/Notices: The Modernization Act expanded the definition of "interested persons" to include step-children from the living spouse, and notice must be given to a tribal chairman or director of the tribe if a guardianship or conservatorship petition is filed for a minor who is a Native American tribal member.

In the annual notice of rights to the person subject to guardianship, the guardian must provide the Bill of Rights, Section 524.5-120, to the persons subject to guardianship. Some other changes are that courts may now order parties into mediation; emergency guardianships may only last 60 days and can only be renewed once; when a petition is filed, a respondent in a guardianship or conservatorship proceeding shall not be compelled to undergo a medical exam against his or her will.

This is by no means an exhaustive examination of the guardianship law changes.

For more details see: www.mncourts.gov/Help-Topics/Guardianship.aspx, www.Wingsmn.org, and www.minnesotaguardianship.org

ⁱ *The act resulted from years of hard work by a coalition of advocates, including: Anita Raymond, Program Director, Center for Excellence in Supported Decision Making; Bob McLeod, Attorney (Best and Flanagan), who led the drafting group; Alicia Munson, The Arc Minnesota, and Sean Burke, Public Policy Director at the Minnesota Elder Justice Center, led the effort to get the bills introduced and authored, and through lobbying support of MN Consortium of Citizens with Disabilities. Thanks to Representative Moller (HF3391) and Senator Ingebrigtsen (SF3258) as lead authors, the bills—having bi-partisan support—moved through judiciary committees and then passed unanimously in the House and Senate. Working Interdisciplinary Networks of Guardianship Stakeholders, *Wings MN Newsletter*, Vol. 4, No. 3, July 2020.*

ⁱⁱ *Minnesota Statutes Sections 484.76, subd. 2; 524.5-102, et seq.*

ⁱⁱⁱ *McLeod, Robert, "Big Changes to Guardianship Law", *MAGiC Journal*, The Minnesota Association for Guardianship & Conservatorship, Volume 31, Number 3, Summer 2020. Pages 1-2, 4-5, 10.*

^{iv} *Minnesota Statutes Section 524.5-102 Subd. 6*

^v *Minnesota Statutes Section 524.5-409 Subd. 1*

^{vi} *Id.*, Subd. 2, 3

MEMBER NEWS

- Collins, Buckley, Sauntry & Haugh, P.L.L.P. is pleased to announce its newest associate attorney: [Sarah Peterson](#).
- Atticus Family Law, S. C. is pleased to announce that attorney [Cassandra Suchomel](#), has become licensed to practice in the state of Wisconsin.

Submit your member news to Barrister editor Bethany Lenderink at blenderink@mnbars.org.

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To place an ad, contact [Nicole Altobell](mailto:NicoleAltobell@mnbars.org) at naltobell@mnbars.org.

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November

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2 RCBF Silent Auction	3 Virtual Bench & Bar Benefit RCBF Silent Auction	4 Virtual Bench & Bar Benefit RCBF Silent Auction	5 Virtual Bench & Bar Benefit RCBF Silent Auction	6 Executive Committee Meeting RCBF Silent Auction	7 8
9	10	11 The 2020 Election CLE	12 Trusts & Estates Section CLE	13	14 15
16	17	18 Board of Directors Meeting Family Law Section CLE	19 COVID & the Caregiving Crisis CLE NLS Virtual Happy Hour	20 Memorials Session	21 22
23	24 Diversity Committee	25	26 Thanksgiving	27	28 29
30			OFFICE CLOSED		
	1	2 CLE Oversight Committee	3 Solo Small Firm Section CLE	4	5 6
7	8	9	10 Trusts & Estates Section CLE	11	12 13
14	15 Real Estate Section CLE	16 Family Law Section CLE	17	18	19 20
21	22 Diversity Committee	23	24	25 Christmas	26 27
28	29	30	OFFICE CLOSED FOR HOLIDAYS		
			31 New Year's Eve	December	

NOVEMBER/DECEMBER CLE AND SECTION PROGRAMMING

(Unless Otherwise Noted)

Location:

All RCBA programming is currently via remote participation only.

Time: Noon – 1:00 p.m.

Cost:

\$15 RCBA members
\$30 non-members

Credit: 1 standard credit applied for

Register at ramseybar.org or call (651) 222-0846.

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November 11 | The 2020 Election - Who won, who lost, who sued, and why

Presenters: Secretary of State Steve Simon; Professor David Schultz, Hamline University and University of Minnesota Law School

Join Secretary of State Steve Simon and Professor David Schultz as they recap the 2020 election and discuss what we can expect in the coming months.

Time: 9:00-10:00 a.m.

Cost: FREE for RCBA, MSBA, and HCBA members; \$25 non-members

November 12 | Trusts & Estates Section: Resolving Ethical Issues in Estate and Probate Matters

Presenter: Susan Humiston, Director, Office of Lawyers Professional Responsibility

This presentation will focus on common ethics issues that occur in your estate planning and probate practice, with an emphasis on best practices in handling prospective clients, avoiding and resolving conflicts, permissible areas of joint representation, and more.

Credit: 1.0 Ethics credit applied for

November 18 | Family Law Section: Implicit Bias and Unconscious Bias as it Relates to Self Awareness and Accountability

Presenter: Joe Reid, Marriage and Family Therapist at Relationships LLC

This presentation will: define implicit bias and unconscious bias; define and practice mindfulness as a resource and skill; understand and explore my defense mechanism; exploring how perceptions impact my relationships with others and how it impacts my decision making; self assess my awareness and openness to the other (perceptions, values, beliefs, choices).

Credit: 1.0 Elimination of Bias credit applied for

Cost: \$15 RCBA members; \$20 non-members

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November 19 | COVID and the Caregiving Crisis

Panelists: Leanne Fuith, Visiting Professor, Mitchell Hamline School of Law; Ann Jenrette-Thomas, Chief Diversity and Inclusion Officer, Stinson LLP; Susan Trombley, Law Librarian

This presentation will: explore the impact of Covid-19 on the primary caregivers in Minnesota families, with attention to women caregivers and women of color; discuss the laws that protect Minnesota caregivers and the gaps in the law that leave Minnesota caregivers vulnerable; address the challenges that Minnesota employers face in developing return-to-work scenarios for their businesses and employees as this crisis persists; offer guidance to Minnesota employers and their legal advisors as they balance the ongoing needs of the Minnesota caregivers who work for them.

Time: 9:00-11:00 a.m.

Credit: 2.0 Elimination of Bias credits applied for

Cost: FREE for RCBA, MSBA, and HCBA members; \$25 non-members

November 19 | Virtual Happy Hour Hosted by the New Lawyers Section: Mindfulness Tools for Wellness

Presenter: Mike Millios, Criminal Defense Attorney, Millios Law, and Executive Director Karuna Community MN

The New Lawyers are offering a series of virtual happy hours this fall with a focus on wellness. New and experienced lawyers are encouraged to attend. Join in with your RCBA colleagues for a conversation on mindfulness tools for wellness (such as meditation and yoga) led by criminal defense attorney Mike Millios.

Time: 5:00-6:00 p.m.

Cost: FREE for all attendees

December 3 | Solo/Small Firm Section: Managing Holiday Stress - Pandemic Edition

Presenter: Robert Schuneman, Outreach Coordinator, Lawyers Concerned for Lawyers

This program will offer insight into some of the triggers of holiday stress in the legal profession (financial, emotional, time pressures) and discuss practical strategies and tactics to prepare for meeting them head-on.

Time: 8:30-10:00 a.m.

Credit: 1.5 standard credits applied for

Cost: \$20 RCBA members; \$30 non-members

December 10 | Trusts & Estates Section: Trusts and Estates Section Practitioner's Toolkit for Capacity

Presenters: Robert A. McLeod, Partner, Best & Flanagan; Dr. Paul Reitman, Forensic and Clinical Psychologist

The materials will (1) give the attorney a working understanding of how to test for capacity, (2) explain clinical capacity testing, (3) help the practitioner to understand how and why the tests are done, and (4) explain how to review expert opinions on clinical testing.

December 16 | Family Law Section: Supervised Visitation & Co-Parenting Skill Building

Presenter: Alysha Price | CEO and Founder, The Price Dynamic

Insider look at The Price Dynamic, a single & co-parenting coaching and consulting firm that offers supervised visitation and monitored exchange for court ordered families. Alysha Price (CEO & Founder) will share the ins and outs of supervised visitation during the pandemic as well as her unique approach to co-parenting coaching and education.

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Kathleen R. Gearin

Ramsey County District Judge, Retired



During 26 years on the bench, Judge Gearin presided over a wide range of civil cases, from family law to complex commercial matters, and gained a reputation for her integrity, decisiveness and sensitivity. As Chief Judge of her district, she frequently dealt with sensitive cases, including the Coleman-Franken Senate recount and the longest government shutdown in U.S. history. She is available as a mediator, arbitrator, special master and discovery referee in cases involving **business/commercial, employment, family law, governmental/public agency, insurance, personal injury/torts, professional liability** and **real property** matters.

The JAMS Minneapolis panel also includes:

Philip L. Bruner, Esq. • Daniel H. Mabley, Hennepin County District Judge, Retired
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