

MassNAELA LITIGATION REVIEW COMMITTEE

The Litigation Review Committee ("the Committee"), a subcommittee of the Litigation Committee, considers litigation involving MassHealth and other matters of concern to our members/clients. This committee reviews cases brought to its attention by MassNAELA members. The goal is to assist with litigation in significant cases on request, to facilitate networking of MassNAELA members with similar cases, to discourage the pursuit of cases which the Committee thinks are potentially harmful, and to keep MassNAELA aware of active cases of concern to our members. The members of the Litigation Review Committee are Emily Starr, Chair, Susan Levin, John Ford, Carol Klyman, Jack McNicholas, Lisa Neeley, and Patricia Keene Martin.

Relative to assisting in litigation, in January of 2009 MA-NAELA and Neighborhood Legal Services, now the Northeast Justice Center, (NJC) entered into an agreement whereby NJC agreed to provide certain support services to MassNAELA members including litigation training as well as support on selected litigation matters. The Committee has adopted criteria for vetting cases, as well as procedures, set forth below.

CRITERIA:

1. Importance of legal issue to clients of MassNAELA members. Review facts of cases to determine if the legal issue applies commonly and thus will have an impact on multiple clients of MassNAELA attorneys.
2. Review for Chance of Success. Research whether elder law attorneys have been successful in the past on the issue in the case, whether states vary in their interpretation of the law in question, whether the law or regulation is clear or subject to administrative interpretation that is likely to be given deference by the courts.
3. Screen for Bad Facts. To avoid bad facts making bad law, make sure that, even if the legal issue is important, the facts are sympathetic and are likely to elicit a favorable response from the decision maker. For example, consider avoiding cases involving very wealthy people conspicuously trying to shelter assets, cases with complicated strategies involving multiple instruments, and cases that appear to be contrived and set up to conspicuously circumvent Medicaid policy.

4. Timing and Resources. Consider if there is sufficient time for MassNAELA to evaluate the case according to the case vetting criteria, the MassNAELA member's commitment to working on the litigation, and whether there are sufficient resources for MassNAELA to be involved.

PROCEDURES

The Committee has developed a case referral form for the use of MassNAELA members who wish to receive assistance from the Committee and/or litigation assistance through the NJC arrangement. This form will be posted to the members' area of the MassNAELA website. Any MassNAELA member who wants to refer a case to the committee for review should complete the case referral form and submit it, electronically, to the chair of the Committee.

MassNAELA
Litigation Review Committee
Litigation Referral Form
email to: estarr@starrvanderlinden.com or
fax to: 978-345-6935

1. Name, address, phone, fax, and email address of the person referring the case.
2. Short and concise statement of the substantive issue and procedural status.
3. Description of the family and fiduciary relationships among the parties, if relevant.
4. Deadline.
5. Referring attorney's prior experience with this type of matter (particularly with the procedure required).
6. Referring attorney's willingness to take the lead on the case if litigated so long as s/he receives support of NJC?
7. Please attach all relevant documents (in PDF format if possible) and send them by email (even if the form itself is faxed).

Members are encouraged to post case descriptions on the Litigation Committee listserv to alert members of pending issues and to receive additional input