

THE MASSNAELA ADVOCATE



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From the President:

In my letter last February I gave warning that this was going to be a busy year and I have not been proven wrong. I also addressed the two goals I had for this year – increased committee membership and active commitment to the first part of our tag line, “Leading the Way in Special Needs . . .” So, how did we do?

Thanks to incoming President Laura Silver Traiger’s idea to include committee signup sheets in our dues renewal envelopes, we have attracted new members to volunteer for various committees. We still need more people but this is a good start.

Annette Hines, Chair of our Special Needs Advocacy Committee, developed and presented six webinars on various topics related to special needs law. They were enthusiastically received and are now archived on our website for anyone who wishes to review them or see them for the first time. She also orchestrated our first Special Needs Advocacy Forum which afforded participants the opportunity to interact directly with attorneys who practice in the field as well as agency personnel who were able to give direction on how the various programs work in “real life.”



In case you missed it in the previous paragraph, we have webinars! This first year they were offered for free while we were working out the kinks. They will be offered next year for a nominal fee – just to cover costs. We are planning another six webinars on topics of interest that you will be able to access from anywhere. The plan is to archive these as well for those attendees who have paid.

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And, we are archiving these webinars on our new and updated website – still a work in progress, but oh so much prettier and more functional than the old one. Stay tuned as this platform is only going to get better.

We saved the Institute and Laura Silver Traiger chaired an excellent program that was a sell out! Our President-Elect Karen Johnson will be chairing another program in March on drafting irrevocable trusts. I recommend you register early as this will be a sell out as well.

I couldn't finish this letter without recognizing the incredible dedication and generosity of all the members who worked to respond to MassHealth's imitation of the Grinch Who Stole Christmas by publishing a host of proposed changes to the regulations with a very short window in which to respond. Susan Levin and Emily Starr spearheaded the response and along with Patti Keane Martin and Liane Zeitz compiled the chapter's comments that were due on Friday, December 16. They had enormous amounts of help from Rebecca Benson, Lisa Neeley, Pam Greenfield, Jason Port, Carol Cioe Klyman, Art Bergeron, Denise Yurkofsky, Harry Margolis, Brian Barreira, Peter Macy, Pam Tames and Lucy Budman, as well as many others. Lisa Neeley, Art Bergeron and Pam Greenfield testified on the Chapter's behalf.

I wish everyone a very Happy New Year – can't wait to see what 2017 brings!

- Margot G. Birke, President MassNAELA

Legislative Updates:

On December 13, 2016, President Barack Obama signed into law the Special Needs Trust Fairness Act, as part of the 21st Century Cures Act. Section 5007 of the Act allows individuals to establish their own special needs trusts. See docs.house.gov/billsthisweek/20161128/CPRT-114-HPRT-RU00-SAHR34.pdf for the text of the Act, and <https://secure.ssa.gov/apps10/reference.nsf/links/12152016025223PM> for an Emergency Message published by the Social Security Administration.

Massachusetts Governor Charles Baker has signed into law the Caregiver Advise, Record, Enable (CARE) Act. The Act contains provisions related to a family caregiver's role when a loved one is hospitalized, including the following: a hospital patient has the opportunity to designate a family caregiver; the family caregiver is notified if the patient is to be discharged to another facility or back home; and the facility must provide an explanation and a live instruction of the medical tasks that the caregiver will perform at home. For the text of the Act, see <https://malegislature.gov/Bills/189/House/H3911>.

MassHealth Updates:

Effective December 2, 2016, MassHealth has revised its regulations to modify how MassHealth treats a community spouse's assets when determining the financial eligibility of a married individual seeking enrollment in a MassHealth

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Home and Community Based Services (HCBS) waiver. MassHealth has imposed an asset limit. See <http://www.mass.gov/eohhs/docs/masshealth/el2016/el-217.pdf>.

The 2017 SSI and Spousal Impoverishment Standards can be found at www.medicaid.gov/medicaid/eligibility/spousal-impoverishment/index.html.

Featured Court Decision:

Giroux v. Laranjo et al., Nos. BR15E0006QC & BR13P2422EA, Bristol Probate and Family Court (March 4, 2016).

In this Bristol Probate and Family Court case, Plaintiff is the Personal Representative and Trustee of the Oakland Peixoto Realty Trust established by Decedent, Joseph A. Peixoto. Plaintiff executed an Amended Schedule of Beneficiaries to the Realty Trust under a Power of Attorney, increasing her share of the Trust. This change was made based on Decedent's request to his attorney and was consistent with the distributions under his Last Will and Testament. J. Field entered summary judgment for Plaintiff finding no breach of fiduciary duty or undue influence. The judge also allowed Plaintiff's motion for fees which were shifted to Defendants under M.G.L. c. 215, §45, effectively eliminating their interest in the estate and trust. This was done without a finding of bad faith, using the statute to order a party whose conduct has triggered litigation to pay the expenses resulting from that litigation.

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Congratulations to our 2016 Award Winners:

Congratulations to the following 2016 MassNAELA Award Winners, who received their awards at MassNAELA's final dinner meeting of the year:

Legislator of the Year: Representative John V. Fernandes

Arthur Stavisky Award: Arlene Germain

Retiring Directors: Maria Baler and Jane Sullivan

Deborah H. Thomson Advocacy Award: Annette Hines

John J. Ford Litigation Advocacy Award: Lisa Neeley

Chapter Member of the Year: Pamela Greenfield

President's Awards: Jessica Batsevitsky, Josh Greenfield and Judith McDougall-Flynn

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Save the Dates!

MassNAELA dinner meetings and educational programs will take place on the following dates:

January 19, 2017

March 2, 2017 (multi-site program)

March 22, 2017 (Board Meeting only)

May 18, 2017

June 15, 2017

September 7, 2017

October 25, 2017

December 7, 2017

Paralegal Program To Be Determined

Litigation Workshop To Be Determined

SEND YOUR NEWSLETTER AND E-BULLETIN CONTRIBUTIONS TO:

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