

THE MASSNAELA ADVOCATE



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From the President:



As I write this final message as your President, I reflect on the amazing opportunity I have been given to serve this organization. It has been a year highlighted by proposed MassHealth regulations (yet to be promulgated), and tireless advocacy by so many of our members relative to the same under the guidance of our lobbyist, Nomita Ganguly. Through these efforts and countless meetings across the Commonwealth, we have forged new relationships with our legislators (Representatives and Senators alike). We have had the privilege through these meetings and those with the Secretaries of Elder Affairs and Health and Human Services to showcase what we, as elder and disability lawyers are really about – advocating for those in need who require dignity and compassion and ethical counsel during difficult and emotional times. The message being that we are partners in this process.

As the population ages, and younger individuals suffer from early onset dementia, Parkinson's, autism and other conditions, we acknowledge that there is a need for more qualified MassNAELA attorneys who will be able to address the expected need. As a result, we are reaching out to our current members and attempting to enlist new lawyers to become active in the chapter in ways they feel comfortable by joining a committee or participating in substantive workgroups. The Board is in the process of reorganizing to provide ample opportunity for direct and meaningful involvement. Beginning in January, we will have a general pre-dinner meeting where new matters will be raised and current initiatives reported on, including our legislative agenda and discussions relative to which cases to legislate. Following this session, we will have identified workgroups in which members can play a specific role. The topics are as varied as Dementia Friendly Communities, Special Needs Planning, Residents' Rights, and Trusts, to name a few. Thank you to incoming president, Karen Johnson, who has been integral in developing this vision.

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We also have begun a new members group, initiated by Clarence Richardson, at which less experienced practitioners can mingle and meet more seasoned attorneys who could serve as mentors. We have offered different ways for disseminating information through our standard dinner meetings, day long Institute, webinars and our revamped website. We are seeking feedback on how we are doing and encourage you to complete the survey (designed by our website and program committees) recently sent to you by email.

In addition, this year has been a continuous celebration in honor of MassNAELA's 25th anniversary and the election of one of our own members, Hy Darling, as National President. We had an amazing National convention in Boston (coordinated in great part by two of our own, Judith Flynn and Margot Birke). And for our final dinner meeting, we had a really FUN trivia night where we learned about the history of our chapter and recapped interesting and influential cases of the year.

Finally, I would be remiss if I did not thank those who have supported me through this year: the Board of Directors, my Executive Board, all of the Committee Chairs, as well as Nomita Ganguly, John Ford, Carole Wagan and the Cohens. Special thanks to Emily Starr who enabled me to spend countless hours on non-billables and to my husband, Rich, and our daughters, who graciously enabled me to dedicate my time to this chapter knowing how important this work is and all of you are to me.

- Laura Silver Traiger,
President MassNAELA 2017

Featured Board of Hearings Decision:

IRREVOCABLE INCOME ONLY TRUST (FAVORABLE)

[Board of Hearings Appeal Number 1615178, November 30, 2017](#)

MassHealth denied the appellant's application for MassHealth long-term care benefits because of excess assets. At issue was a trust containing real estate. MassHealth argued that the trust was countable because the appellant's right to use and occupancy entitled the appellant to fair market value rental income from the property. MassHealth also argued that accumulated income in the trust becomes principal in the month after it is received. The Appellant argued that the right to use and occupy property in trust is not a countable asset but rather an income interest. The Board of Hearings approved the appeal, finding that the imputed value of rental income should not be converted into an asset for eligibility purposes. Also accumulated income cannot be distributed to the appellant under federal law, MassHealth regulations and the terms of the trust.

Contributed by: Robert P. Ford, Law Office of Robert P. Ford, North Andover

Summary by: Jessica S. Batsevitsky, Law Office of Jessica S. Batsevitsky, LLC, Needham

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Member's Note on the Affordable Care Act:

The Affordable Care Act mandates that MassHealth must apply the spousal minimum monthly maintenance needs allowance (MMMNA) applicable to nursing home based applicants to community-based applicants as well. This means that the husband and wife who apply for the frail-elder waiver program are entitled more than simply the standard \$500.00 per month for support that MassHealth has allowed. The relevant section of the law is PL 111-148, Sec. 2404. MassHealth is not presently allocating income in this fashion.

Contributed by: E. Spencer Ghazey-Bates, Gerard, Ghazey & Bates, P.C., Northampton

MassHealth Update:

MassHealth has issued several recent publications, including Eligibility Letter 222 and 223, which can be found at <http://www.mass.gov/eohhs/gov/laws-regs/masshealth/member-eligibility-lib/eligibility-letters/2017-eligibility-letters.html>.

Probate and Family Court Update:

The Probate and Family Court has announced the approval of Standing Order 3-17, Fiduciary Litigation Session Pilot Project, effective November 20, 2017. The Standing Order establishes a Fiduciary Litigation Session to be held in the Norfolk Division of the Probate and Family Court for a pilot period of one year. The Honorable Elaine M. Moriarty (ret.) will be the presiding judge of the FLS during the pilot period. See www.mass.gov/courts/case-legal-res/rules-of-court/probate/pfc-orders/3-17.html.

Congratulations to our Award Winners!

The following awards were presented at the final chapter meeting of 2017 on December 7:

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| Legislator of the Year: | Senator James T. Welch |
| Arthur Stavisky award: | Secretary of Elder Affairs Alice Bonner |
| Deborah Thomson award: | Rebecca Benson |
| John Ford award: | Brian E. Barreira |
| Member of the Year: | Margot G. Birke |
| President's Awards: | Pamela C. Tames, Susan H. Levin, Nomita Ganguly |
| Retiring Board Members: | Albert Gordon, Natalie A. Simon, Liane Zeitz, John L. Roberts |
| Outgoing President: | Laura Silver Traiger |

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Welcome our Newly Elected Chapter Officers and Directors!

Welcome our newly elected Chapter Officers and Directors:

Brian Barreira

E. Spencer Ghazey-Bates

Lisa Neeley

Cathleen Summers

2018 Save-the-Dates

Save the dates for our Chapter dinner meetings and educational programs in the upcoming year:

Thursday, January 25, 2018

Thursday, April 26, 2018

Thursday, June 24, 2018

Thursday, September 13, 2018

Thursday, October 25, 2018

Thursday, December 6, 2018

SEND YOUR NEWSLETTER AND E-BULLETIN CONTRIBUTIONS TO:

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