May is Older Americans Month, and the theme of this year’s celebration is “Get into the Act,” to focus on how older adults are taking charge of their health, getting engaged in their communities, and making a positive impact in the lives of others. This theme also reflects the 50th anniversary of the Older Americans Act. President Lyndon B. Johnson signed the Older Americans Act into law in July 1965. Since that time, the Act has provided a nationwide aging services network and funding that helps older adults live with dignity in the communities of their choice for as long as possible. As elder law and disability rights attorneys, we play a vital role in ensuring our clients get into the act as much as possible, including accessing all the services and supports they need.

The Elder Law and Disability Rights Section “got into the act” in May with our annual May 1 Law Day event, providing free advance directives to older adults and persons with disabilities across the state. This year, the ELDR Section is honored to receive 2015 Herbert S. Garten Special Project Maryland Pro Bono Service Award from the Pro Bono Resource Center of Maryland for this annual pro bono service. Please join us at the Annual Meeting in Ocean City on June 13 for the presentation of this award. Special thanks go to Steve Elville, our Law Day committee chair; Marni Greenspoon, who led our work with persons with developmental disabilities; all the county coordinators; and everyone who has given their time to this important cause.

The ELDR Section’s Mix and Mingle networking Section Meeting on April 21 in Columbia was a great success, with newer and more seasoned attorneys sharing

continued on page 2
Message from the Chair...

continued from page 1

information and building relationships. Wendy Little Schieke and Angela Grau did a fantastic job organizing the session, and thank you to the law firm of Davis, Agnor, Rapaport and Skalny for hosting the event.

Our legislative meeting in Annapolis in February was another opportunity to “get into the act” and directly hear from elected and appointed government, including Sen. Delores Kelley and Department of Disabilities Deputy Secretary George Failla, Jr. With our partners from the National Academy of Elder Law Attorneys, we reviewed legislation of interest to older adults and persons with disabilities – watch out for an upcoming special edition of Elder Law Extra focused on the legislative session. As always, the ELDR Section Council is appreciative of the ongoing efforts of Morris Klein to keep us up-to-date on all things legislative, along with his legislative committee members, Mary Jo Broussard Speier, Bill Gering, and Benjamin Woolery, and our NAELA partner, Catherine Stavely.

You also have an opportunity to interact with your fellow ELDR Section members at our upcoming Continuing Legal Education sessions. Next up, on May 18, is a unique new program: “Document Drafting for the Elder Law Lawyer,” which will include discussion of engagement & conflict letters, advance directives including the mental health advance directive, financial powers of attorney, special needs trusts, will basics, and deeds. July 14, in addition to being Bastille Day, is our staple program, “Hot Topics in Elder Law” – you won’t want to miss it. Looking ahead to the fall – Fair Housing is coming October 15 as well. We all appreciate the work of the chairs of our CLE programs and our CLE Committee: Mary Aquino, Ellen Callegary, Jason Frank, Laurie Frank, Morris Klein, Camilla McRory, and Richard Neuworth.

Of course, the Annual Meeting in Ocean City is the best opportunity of the year to network and learn from fellow MSBA members. This year, the ELDR Section is partnering with the Veterans and Military Law Section to put on a session of interest to all of us with aging family members, particularly aging parents. Using a case study approach, a panel of attorneys, care managers, and a financial planner will show participants how to spot issues parents may be facing and identify some steps a caring family can take and tools that can be put in place to help parents as they move into this period in their lives. Thank you to Victoria Grace and Mary Aquino for planning this Friday morning session. This is an opportunity not just to get into the act, but also to get your act together – I plan to be there and take notes!

As always, we can’t fit all the Section’s activities and contributions into one column. I have valued the opportunity to serve as Chair of the Elder Law and Disability Rights Section this year. My deepest appreciation to all the members of the ELDR Section Council, including all those I have named already, as well as Larry Adashek, Jo Benson Fogel, Leslie Fried, Jon Gasior, Ann Karwacki Goodman, Sigrid Haines, Jeff Myers and this year’s officers: Vice Chair Elena Boisvert, Secretary Richard Neuworth and Treasurer Mary Aquino. It has been an honor and a privilege to work with you – many thanks for contributing your time and expertise. I have also enjoyed getting to know more of our Section Members and better understanding the vital services you provide your clients. I hope to see you at the Annual Meeting in Ocean City!

Respectfully yours,

Jennifer Goldberg
MSBA Elder Law and Disability Rights Section Chair, 2014-2015
Many individuals with serious psychiatric illnesses will experience a time when they need to be hospitalized to maximize treatment potential, in a safe environment, with immediate access to psychiatric clinicians. In some cases, the severity of the psychiatric illness will render the individual unable to make decisions. Maryland law stipulates that, under certain circumstances, if the person refuses treatment deemed necessary, providers may override that refusal. A considerable number of individuals treated under these conditions have had adverse experiences related to unwanted interventions and loss of autonomy. Unfortunately, people then refuse future hospitalizations to avoid further undesirable experiences – to the detriment of their mental health. In the spirit of the federal Patient Self-Determination Act of 1990 and to address issues of unwanted interventions, mental health advocates pushed for the utilization and acceptance of advance directives for mental health care.

Mental Health Advance Directives (MHADs), also known as Psychiatric Advance Directives, are legal documents, which describe a competent person’s specific instructions and preferences regarding future psychiatric treatment, in the event the person may not be competent to communicate treatment choices at that time. Under Maryland law adults with mental illnesses who become incompetent to make decisions can, through an Advance Directive for Mental Health, identify mental health professionals, programs and facilities that the person would prefer to provide their mental health services; appoint health care agents (surrogate decision-makers) to authorize treatment and/or make decisions as instructed by the individual in the advance directive; and state preferred medications and treatments. The advance directive takes effect when the person’s attending physician and a second doctor, not directly involved in the person’s care, certify in writing that the person is incapable of making an informed decision about his/her mental health treatment. The advance directive is valid until the person changes or revokes it.

The potential benefits of MHADs include increasing treatment collaboration by improving communication between the individual and his/her treatment team; allowing for consumer-centered care and treatment planning; expediting crisis interventions; preventing unnecessary guardianship procedures; and promoting individual autonomy in the recovery from mental illnesses. Individuals with mental illness have found the MHAD to be an empowerment tool for meaningful and person-centered decision making; spawning important conversations with family, friends and therapeutic partners; planning for potential hospitalization and ultimately expediting recovery from severe episodes of illness.

In 2009, a Maryland Mental Health Advance Directive was developed by a consortium representing the Maryland Department of Health and Mental Hygiene, providers, consumers and advocacy groups. While an individual can use or create other templates to serve as their Advance Directive, this particular version was constructed to be comprehensive and consumer friendly. The Maryland MHAD, for example, facilitates specificity with regards to medications and their dosages, administration (or not) of electroconvulsive therapy, types of mental health treatment, choice of hospital, treating professionals, notification of others, visitors, consent to release information, appointment of health agent, co-existing conditions, approaches to distress, preferences regarding touch and personal space and more. Perhaps most importantly, the Maryland MHAD provides a section that addresses the cancellation of the MHAD.

A notoriously contentious situation arises when an individual’s symptoms of mental illness become intense or disabling but the individual denies a problem and/or refuses treatment. Even if the individual painstakingly created an MHAD for exactly this exacerbation of his/her illness, and despite the individual’s mental state, the law permits the revocation of an MHAD at any time. The Maryland MHAD attempts to address this situation by allowing individuals to indicate ahead of time whether or not they intend to be
able to revoke their MHAD during periods of incompetence. Unfortunately, the option to waive one’s right to revoke has no foundation in Maryland law, which has made providers wary of proceeding with treatment over objection, even if the individual has indicated this to be their preference. This reluctance may soon change. At the time of this writing, legislation is working its way through the Maryland General Assembly to establish in statute that an individual may elect, in an advance directive, to waive the right to revoke any part or all of the advance directive during a period when they have been certified as incapable of making an informed decision by the person’s attending physician and a second physician. Only time will tell whether this new legal authority will give providers greater comfort in complying with the wishes one has laid out in their MHAD.

A copy of the Maryland Mental Health Advance Directive along with instructions, FAQ and checklist can be accessed on the Mental Health Association of Maryland’s website: http://mhamd.org/getting-help/adults/adult-advance-directive/. An educational slide show designed for consumers is available on the Network of Care website along with important regional resources in support of individuals with mental illness: http://baltimorecounty.md.networkofcare.org/mh/content.aspx?id=1449. To advance understanding and usage of the mental health advance directive, the Mental Health Association of Maryland provides MHAD presentations to patients, clients, family members and mental health and affiliated professionals. The National Resource Center on Psychiatric Advance Directives dedicates a section of its website to legal professionals offering basic information, educational webcasts, legal resources, scholarly work and state-by-state information about Psychiatric Advance Directives: http://www.nrc-pad.org/health-and-legal-professionals.

Kim Burton, Director of Older Adult Programs
G. Dan Martin, Esq., Director of Public Policy
Mental Health Association of Maryland

---

**Proposed Change to Rule 6-416**

*By Benjamin J. Woolery, Esq.*

The Rules Committee is considering adding a cross reference to Rule 6-416 that would incorporate Estates and Trusts Section 7-603. Rule 6-416 provides the framework for attorney fee petitions for estate work, and also specifies that fee petitions are not required for contingency fee cases under certain circumstances. 7-603 establishes that the personal representative or his/her nominee is entitled to expenses incurred in the course of estate litigation. If the cross reference is added, fee petitions for court approval could be required for any and all litigation involving an estate, regardless of whether estate funds will be used to pay the fees.

Estates can be involved in many types of litigation that are ancillary to the estate’s administration and often are done outside the probate process and the reach of the Orphan’s Court. Under the proposed change, attorney’s fees incurred therein, might now be required to have approval by the Orphan’s Court, regardless of the source of funds contemplated for payment. Some examples include: a Circuit Court action over interpretation of an ambiguous Will; A district Court action to evict a Tenant from an estate’s house; quiet title actions in the Circuit Court; Declaratory Judgments over insurance policies, which, more often than not are in the United States District Court.

Benjamin J. Woolery, Esq. is following this issue and the progress of the Rule change and welcomes your thoughts and comments. He can be reached at: 5303 West Court Drive, PO Box 358, Upper Marlboro, MD 20773 (301) 627-5222.
Save the Dates

Upcoming CLE Opportunities

Document Drafting for Elder Law Practitioners
May 18, 2015 | 8:30 am - 1:30 pm
Ecker Business Training Center, 6751 Columbia Gateway Drive, Columbia, MD 21046

2015 Hot Topics in Elder Law - July 8, 2015 | Columbia, MD

Housing Options for the Elderly and Disabled - October 15, 2015 | Columbia, MD

MSBA Annual Meeting
Join the Elder Law and Disability Rights Section on Friday, June 12, 2015, 11 am – 1pm, when we join the Military and Veteran’s Affairs Section for a lively discussion entitled:

MY AGING PARENTS ARE DRIVING ME BATTY
Thanks to advances in science, and a general trend to a healthier life style, the people we love are living longer than ever before. That is great news, unless you happen to have parents who may not be aging as gracefully as you would hope. Now it is your turn to look after your folks’ affairs, spotting issues, assisting them with decision making, perhaps even being the child who is responsible for managing their health care and financial needs. As the responsible person, either alone or with a sibling, what should you be looking for as you advise your family (you are, after all, THE LAWYER!)? Using a case study approach, a panel of attorneys, care managers, and a financial planner will show participants how to spot issues parents may be facing and identify some steps a caring family can take and tools that can be put in place to help parents as they move into this period in their lives.

Speakers: Catherine E. Stavely, Esq., Catherine E. Stavely Law Office; Victoria L. Grace, Esq./RN, Wase, Wase & Grace, LLC; Tracey P. Warren, Esq., United States Department of Veterans’ Affairs; Brian Rosenbaum, Melnick - Rosenbaum Wealth Management; and Mary Faith Ferretto, MSW, Ferretto Elder Care will share their combined wealth of knowledge and experience to help everyone better manage these difficult challenges.

"You can't help getting older, but you don't have to get old.
– George Burns"