



NEWSLETTER ELDER LAW

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Fall 2000

Elder Law Section proposes new legislation

Six legislative bills proposed by the Elder Law Section have been approved by the Oregon State Bar Board of Governors. The bills are among 28 proposals from various Bar sections and committees submitted to legislative counsel for pre-session filing with the 2001 Oregon state legislature. The Elder Law Section proposes the following:

- **Notice in adult protective proceedings** Amendments to the notice requirements in protective proceedings made in the last legislative session inadvertently deleted the requirement of specific notice to adult respondents in protective proceedings other than guardianships.

The Section proposes that ORS 125.070(2) and (3) be amended to include such notice. This

amendment will restore the notice requirement and make it clear that the new notice requirements added in the last session for adult guardianships are in addition to, and not in place of, the previous notice requirements.

- **Medicaid payment for guardianship fees and costs** Medicaid pays for most of a recipient's medically necessary expenses. Medicaid coverage for long-term care also allows the state to pay for certain necessary, non-medical expenses for a recipient. These payments can be made either directly to the recipient or by permitting the recipient to deduct payment for such expenses from his or her income before calculating the amount that the recipient must contribute toward the cost of care. For some individuals in long-term care, a guardianship is needed in order to authorize necessary medical treatment. However, it is often difficult or impossible to pay the costs associated with creating and maintaining a guardianship because in Oregon the entire available income of the recipient must be paid toward the cost of medical care. Medicaid programs in other states permit coverage of some or all guardianship costs and fees.

The Section proposes that ORS 414 be amended to allow costs and fees associated with guardianship to be paid either out of the long-term care Medicaid recipient's income or out of Medicaid funds when a guardianship proceeding is necessary to authorize needed medical treatment.

- **Validity of powers of attorney** Prudent estate planning includes planning for possible incapacity. To that end, clients will execute powers of attorney. However, banks and other financial institutions frequently refuse to accept the validity of powers of attorney signed more than a year or two prior to being presented, stating that the power is "stale." This practice circumvents the benefits of and reasons for

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such advance planning. At minimum, it leads to unnecessary expense and often totally negates the client's advance planning.

The Section proposes amending ORS Chapter 127 to ensure the continued validity of existing powers of attorney, perhaps by adopting a modified version of Section 5 of the Uniform Probate Code relating to the Uniform Durable Power of Attorney Act. The Section plans to work with the Oregon Bankers Association and other OSB sections to come up with acceptable language.

- Medicaid trusts and protective proceedings** Under federal law, certain types of trusts are not counted as resources for the purpose of determining eligibility for Medicaid assistance. The "under 65" or "(d)(4)(A)" trust can be funded by the resources of a disabled Medicaid recipient under the age of 65 and used to pay the recipient's supplemental needs. Federal law requires that the trust be established by the person's parent, grandparent, legal guardian, or a court. The Medicaid applicant or recipient cannot create the trust.

If a parent or grandparent is unavailable, the only option in Oregon is to file a protective proceeding asking the court to approve the trust, or to appoint a conservator to create the trust.

However, for the court to obtain jurisdiction in an Oregon protective proceeding, the applicant or recipient must meet the standards for financial incapacity. Oregon case law affirms that courts may not create such trusts for financially capable individuals. Matter of Baxter, 128 Or 91, 874 P2d 1361 (1994).

The Section proposes that ORS 125.005(3) be amended to allow Medicaid applicants and recipients to take advantage of the supplemental needs trust provisions under federal law on the same basis as residents of other states. The Section proposes that the following be added:

A court may find that a person who does not otherwise meet the definition of financial incapacity, but who receives benefits based on disability under Title II or Title XIX of the Social Security Act, or who meets the disability standards under Title II or Title XIX of the Social Security Act, is financially incapable for the sole

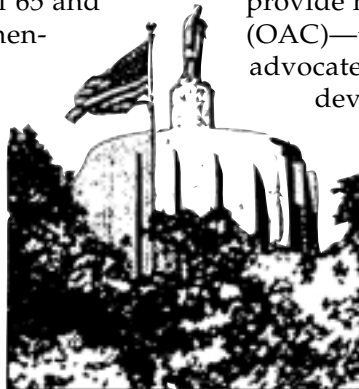
purpose of approving the creation of an irrevocable trust for the benefit of the protected person, with or without the appointment of a fiduciary, provided that any amounts remaining in the trust at the protected person's death are to be paid to the state of Oregon, or to any state which has provided medical assistance to the protected person, up to the total amount of medical assistance provided.

- Notice in post-guardianship placement of protected person** In an initial guardianship petition, the petitioner must provide notice to the Long Term Care Ombudsman's office (LTCO) if the respondent is a resident in a nursing home or residential facility, or if the petitioner plans to place the respondent in such a facility. The petition must provide notice to the Oregon Advocacy Center (OAC)—the system designated to protect and advocate for the rights of individuals with developmental disabilities—if the respondent is a resident in a mental health treatment facility or a residential facility for persons with developmental disabilities, or if the petitioner plans to place the respondent in such a facility.

If the guardian decides to place the protected person in any of the facilities named above *after* the guardianship is established, the guardian must give notice to certain designated persons. The required notice does not include the requirement of notice to the LTCO or OAC. While some attorneys routinely give such notice, as is the best practice, the Section believes it important that these organizations—as well as any attorneys who represented the protected person in the protective proceedings—have full information about the proposed residential placement.

The Section proposes that ORS 125.320(3) be amended to require guardians to send copies of intent-to-place notice to former attorneys of the protected person, to the Long Term Care Ombudsman, and/or to the Oregon Advocacy Center.

- Review of medical advance directives in protective proceedings.** Petitions for judicial review of medical advance



directives currently may be brought only in a separate proceeding under ORS 127.550. In many cases where the validity or effect of an advance directive is at issue, a guardianship proceeding is already underway. Requiring two parallel proceedings to address similar or identical issues is inefficient.

The Section proposes that ORS 127.550 be amended by adding a new subsection (3) to allow a consolidated judicial review proceeding on an advance directive for health care.

Kudos to Jennifer Wright, who chairs the Elder Law Section's legislative committee, for her hard work. Committee members are: Helen Hempel, Dady Blake, Penny Davis, and Wes Fitzwater. OSB liaison is Susan Grabe, Public Affairs Attorney. For a list of all OSB bills for pre-session filing, contact Ms. Grabe at 503.620.0222 x380 and ask for the 2001 Legislative Summary Booklet.

Editor's note: Statute numbers may change during the legislative process.

Estate Planning Section proposals

Like the Elder Law Section, the Estate Planning Section has a number of proposals for next year's legislative session:

- Bring revocable living trusts into alignment with will and trust law.
- Add notice to creditors requirement after the death of a settlor of a revocable living trust.
- Adopt a new Uniform Disclaimer of Property Interests Act.
- Amend ORS 114.505 through .560 to allow after-acquired probate property to be transferred to the decedent's heirs or beneficiaries under the small estate provisions.
- Allow testamentary transfers to minors without court approval in an amount up to \$30,000 (the limit is currently \$10,000); and allow donors of property to make gifts either during the donor's lifetime or at death, to minors until any age between 21 and 25 years (the limit is currently between ages 18 and 21 years).

For further information contact Richard Pagnano (503.452.5050) or David Seulean (541.773.5830).

Bar to publish elder law book

Elder Law, the first comprehensive reference for this still-new practice area, is scheduled for publication later this fall by the Oregon State Bar.

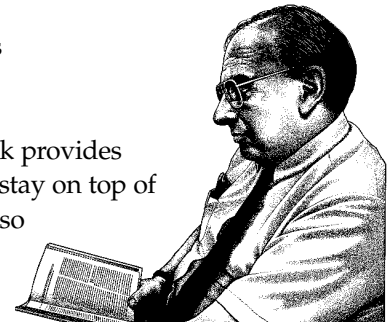
Written specifically for Oregon lawyers, this book is for any attorney who does estate planning, health law, general practice, family law, or litigation that involves the elderly or people with disabilities.

Elder Law takes you through the many issues and processes that you will encounter:

- planning for incapacity
- acting when your client becomes incapacitated
- helping your client understand the legal aspects of financial planning
- using the Social Security and Medicare programs
- guiding your client through health insurance and long-term care choices
- paying for long-term care
- elder abuse and nursing home litigation
- ADEA and ADA
- family law issues
- much more

This important book provides resources to help you stay on top of this changing field. Also available are useful forms on computer disk. If you prefer, you can order the book in CD-ROM format.

The price for *Elder Law* is \$165, but those who plan to attend the September 22 CLE seminar "Problem Solving in Elder Law Practice" can save \$20 by ordering the book at the time of registration. (See registration/order form on page 9.)



Legal aid event planned for October 18

Oregon's recently completed Legal Needs Study, co-sponsored by the Oregon State Bar, the Governor's Office, and the Oregon Judicial Department, will be the focal point of this year's Open Houses event, held October 18 in legal aid offices throughout the state. The Oregon State Bar is once again hosting this event and invites you to join Bar leaders, legislators, community leaders, foundations, bankers, legal aid staff and the press in recognizing the work these offices have done to achieve access to justice in Oregon. Save the date!

New rules on probate and conservatorship accountings take effect

By Sam Friedenber, Portland

New Uniform Trial Court Rules (UTCRC) affecting probate and conservatorship accountings became effective August 1, 2000. Compliance with the new rules is expected to facilitate the court review and approval of accountings. The rules, which can be found in UTCRC Chapter 9, are the culmination of a process which involved several groups.

In Multnomah County, Judge Elizabeth Welch's Probate Advisory Committee worked on guidelines for accountings. The goals were:

- to standardize the format so attorneys could rely on a single form of accounting
- to simplify court auditing
- to make misappropriations more difficult to hide
- to make the form simple enough to be understood by non-lawyers (including inexperienced office staff and pro se parties) and the occasional practitioner.

A subcommittee of the Bar's UTCRC committee proposed a variation of the California Probate Code and the rules of the Committee on National Fiduciary Accounting Standards, but the proposal was found to be too complicated.

A subcommittee of the Estate Planning Section of the Bar, headed by Washington County Judge Pro Tem Rita Batz Cobb, developed the Multnomah County rules into final form. They represent the thoughts and comments of innumerable court staff, judges, and practitioners, and were approved by the Oregon Supreme Court.

The salient points of the new rules are:

- **Narrative** The accounting shall have a narrative that will include the first and last day of the accounting period and shall describe any changes in the assets of the estate or the financial life of the protected person.
- **Bond** There will be a formula for determining the amount of the current bond and whether the bond is the statutorily required amount. Also, there must be a notation of restricted assets, with reference to the date and title of the order imposing the restriction.
- **Receipts and Disbursements** The traditional list of receipts and disbursements has been standardized with a requirement for more information, such as an explanation of the purpose of the transaction. Each account must be reported and totaled separately. Inter- or intra-account transfers need to be identified.

- **Asset Schedule** There must be a five-column schedule summarizing vital asset information and values:

- (1) all assets in existence at some point during the accounting period
 - (2) asset value at the beginning of the accounting period
 - (3) asset value of later-acquired assets, at acquisition
 - (4) asset value at disposition if the asset was disposed of during the accounting period
 - (5) asset value at the end of the accounting period.
- The schedule can also include other information and shall have a sum of all columns. Household goods and personal belongings can be totaled on one line.

- **Disclosure** There is a specific disclosure requirement for transactions that are or may be a conflict of interest.

- **Miscellaneous**

- Depository statements must be dated within 30 days of the closing of the accounting period.
- Depository statement balances must be reconciled with the stated balance of the accounting.
- Depository statements must also evidence the beginning balance of the accounting (unless submitted in the previous accounting).
- Copies of vouchers and depository statements need not be part of any statutory notice.
- A sale of real estate must be evidenced by a copy of the title company's seller's statement.

Many of the new rules are customarily part of current accountings. Trust companies are exempted from some of the requirements.

As enacted, the rules represent a balance between larger counties that need standardization and smaller counties that do not have the same concerns. The new format must be accepted by all judicial districts, and may be made mandatory by Supplemental Local Rule (SLR). It is unclear which counties will do this. It is clear that standardization will be appreciated by the courts.

The Estate Planning Section will submit a sample form of accounting to the UTCRC committee in October 2000. Rob Dorszynski is coordinating that task.

The changes are available in PDF format on the Oregon Judicial Department Web site at www.ojd.state.or.us. Order copies for \$10 from AJD Publications Section, Supreme Court Bldg, 1163 State Street, Salem, OR 97310. Phone: 503.986.5656

New life estate rule causes concern

By Shirley Bass, Portland

On February 1, 2000, a rule adopted by the Senior and Disabled Services Division (SDSD) for state recovery of life estates took effect. The adoption of OAR 461-135-0845 troubles Oregon practitioners in the areas of elder law, estate planning, real property, and taxation. It is retroactive to 1995, and some recovery claims have already been filed based on it.

Background

Federal law allows recovery from life estates to the extent that property is owned by the former Medicaid recipient. While a life estate gives a person the right to use the property during his or her lifetime, that right ends at death, whereupon no property of the Medicaid recipient remains for state recovery. Until February this had been the rule in Oregon. The new rule reverses this position and allows state recovery. The former estate recovery rule relating to life estates followed federal law without violating Oregon property law. At its July 14, 2000 executive committee meeting, the Elder Law section voted to monitor and oppose this new rule.

The issue

Does the remainder beneficiary's interest in a life estate vest at the moment the interest is transferred to the remainder person or at the moment of the life estate holder's death? Oregon property law would seem to indicate that it vests at the moment of transfer and the life estate is extinguished at death. Therefore, the life estate has no value at death. For example, if the remainder beneficiary fails to survive the life estate holder, then the remainder belongs to the remainder beneficiary's estate, not to the life estate holder's estate. Further, during the life estate holder's lifetime, the signature of both the life estate holder and the remainder beneficiary must be obtained in order to sell, hypothecate, or otherwise dispose of the property, because the remainder beneficiary's interest has already vested.

Far reaching consequences

The consequences of this new rule will be wide reaching. Bona fide purchasers of the remainder interest could find themselves with a state claim equal to or exceeding the purchase price. In such a case, the purchaser would be forced to pay twice in order to satisfy the state's claim and obtain clear title.

Likewise, if a Medicaid recipient satisfies the transfer penalty for gifting the property, then his

or her estate should not have to pay a second time upon death. See Rule 461-140-0250 of the SDSD Worker Guide for tables used by the Agency to determine the uncompensated value of a life estate when an applicant has gifted real property while retaining a life estate interest. The table is used for purposes of determining the period of disqualification from Medicaid benefits. For example, a 65-year-old applicant, Mr. Smith, gifts his residence worth \$100,000 to his son Jim after October 1, 1998. According to the table, Mr. Smith has retained .67970 of the property and has given to Jim .32030 of the property. By dividing the current average private pay rate of \$3,320 into the value of the gifted property, \$32,030, Mr. Smith will be disqualified from receiving Medicaid benefits for nine months. Thus, Mr. Smith suffers a penalty. If the state retains a right of recovery after Mr. Smith dies, there will be a second penalty.

Rule retroactive

By making the new life estate rule retroactive, the SDSD has departed from its prior policy of a "grandfather" provision. Does the major policy shift signal a new position for the agency by placing economic factors ahead of basic fairness? Certainly the result is uncertainty for clients and practitioners when selling property and otherwise planning a client's affairs.

CLE seminar: Problem Solving in Elder Law Practice

**Real answers to real problems
faced by elder law practitioners**

FRIDAY, SEPTEMBER 22, 2000
Oregon Convention Center
Portland, Oregon

5 MCLE credits and 1 Ethics credit

Cosponsored by the Elder Law Section

Details on Page 8

After *Olmstead*

Community-based care supported by courts and agencies

By John D. Sorlie, Bend

The U.S. Supreme Court has issued an opinion that under the Americans with Disabilities Act of 1990 (ADA), undue institutionalization constitutes discrimination. While this opens the door to alternatives to nursing homes for elderly Americans, the shortage of suitable community-based caregivers has effectively slowed progress on this path.

The plaintiffs in the case that led to the Supreme Court ruling were two women with disabilities. Both had been diagnosed with schizophrenia and one with a personality disorder. Both women were confined to treatment in a residential psychiatric unit, and although their doctors had indicated it would be appropriate for the plaintiffs to receive community-based treatment, the women were not given the opportunity to obtain that type of integrated treatment.

In a decision issued June 22, 1999 entitled *Olmstead v. L.C.*, 119 S.Ct. 2176 (1999), the court ruled that a disabled person be provided the most community-integrated treatment appropriate if: (a) state treatment professionals conclude it would be appropriate, (b) the person agrees to such treatment, and (c) it would not create an undue financial burden on the state.

Oregon SDDS will OK community-based options

Following the *Olmstead* decision, the U.S. Department of Health and Human Services issued a letter to all state Medicaid directors to suggest that each state develop a comprehensive work plan to strengthen community service systems to serve people with disabilities in the most integrated and appropriate setting.

According to Dan Kaplan, the Executive Director of the Senior & Disabled Services Division for Oregon, SDDS reviewed the *Olmstead* decision and the state's obligations under it, and concluded that the existing state Medicaid program gave persons with disabilities the options that are required under *Olmstead*. Specifically, in addition to nursing home care, Medicaid benefits in Oregon are available for foster home care and in-home care provided by licensed care providers. Mr. Kaplan suggests that if a person with a disability requests an alternative to a nursing home, SDDS staff will take the appropriate action to assist in transferring care to a more community-based service. As a result, SDDS has not developed a work plan that would lead to a change in amount of community-based care provided to the disabled elderly.

Shortage of care providers reduces opportunities for in-home care

However, Mr. Kaplan acknowledged that there is a shortage of in-home care providers who are qualified and are willing to work for the reimbursement amount of \$8.50 per hour. With a shortage of in-home care providers, a disabled elderly person is less likely to be able to stay at home and receive Medicaid supported in-home care. This is an issue of funding for the Medicaid program and SDDS is working on trying to raise the rate paid for in-home care providers in the hope that additional care providers will be attracted.

A recent case filed in Federal District Court in Oregon entitled *Staley v. Kitzhaber* has raised the issue of community-based services for the disabled. That action alleges that the failure to find home and community-based services has resulted in a long waiting list for individuals suffering from developmental disabilities. Although probably not directly applicable to the elderly and Medicaid, this case has not yet been resolved.

Let State know about change

Attorneys can help improve the flow of paperwork for State estate administrators by letting them know when circumstances change.

When a lawyer files an Affidavit of Claiming Successor on behalf of a family, a copy is sent to the State as required by statute. Usually a cover letter asks that all correspondence from the State be directed to him or her. In some cases, when the State eventually sends a letter to the lawyer, the lawyer responds that he or she no longer represents the estate and that further inquiries should be made directly to the individual client.

To avoid these situations, Roy Fredericks, Manager of the Estate Administration Unit, requests that an attorney who has written the State requesting that correspondence be directed to him or her should inform the State when he or she stops representing the estate.

Multnomah County tests guardianship pilot project

By Shirley Bass, Portland

Effective July 1, 2000, the Multnomah County Circuit Court inaugurated a Guardianship Monitoring Pilot Project, which was authorized by the 1999 legislature as part of House Bill 2760. The enabling legislation is printed immediately following ORS 125.730. The Pilot Project requires court visitors to do more detailed investigations and it expands respondents' due process rights by having court visitors communicate an objection or request for counsel to the court. Court visitors will have new duties including annual or biennial unannounced visits and reports to facilitate regular reviews by the court.

Visitor fees increased To file a case and receive a file number, the petitioner must provide the following:

- An original notarized petition to appoint a guardian signed by the proposed fiduciary. This can be combined with a guardianship/conservatorship petition.
- A copy of the original petition. The copy will be forwarded by the probate court clerk to the appointed court visitor.
- A \$65.00 filing fee
- A \$450 fee (formerly \$300) for the court visitor's fee deposit. In lieu of the fee, a motion, affidavit, and waiver of visitor's fee can be filed. Copies of the motion are available at the probate court front desk. The court will be responsible for preparing the order appointing the visitor. The court visitor will have new duties including a year-end review and an unannounced visit. The physician's declarations letter is now obsolete.

Filing objections ORS 125.075(2) allows for oral objections to guardianship petitions. The court will continue its policy of not accepting oral objections over the telephone. However, a new "blue form" for filing objections is now available at the probate court front desk. The simplified form, which must be on blue paper and in 14-point type, can be signed by the respondent alone and given to the court visitor or mailed to the courthouse, Room 224.

If an objection is filed, or the respondent has requested appointment of counsel, the court will set a hearing as quickly as possible at a 9:00 a.m. *ex parte* hearing on a Tuesday, Wednesday, or Friday. The court will call the attorneys for the petitioner to arrange the hearing date. Note that it is the petitioner's responsibility to transport the respondent to any hearings. At this *ex parte* hearing, no witnesses will be heard. Further, the court visitor may appear by tele-

phone. Questions should be directed to Debbie at 503.988.3545. (Note the new prefix.)

Legal representation The court visitor will inform the respondent of the right to be represented by counsel, and the right to have counsel appointed. The court visitor will notify the court if the respondent wants to have an attorney appointed. Lawyers who are willing to accept appointments in guardianship cases should contact the probate court office. Court appointed attorneys can be paid from the respondent's funds in accordance with ORS 125.095.

Members of the Multnomah County Pilot Project Committee were Judge Elizabeth Welch; Alice Wheeler, Probate Court Administrator; Karen Olson, Trial Court Administrative Assistant; and attorneys Sam Friedenberg and Wes Fitzwater.

Although the Pilot Project is currently limited to Multnomah County and is scheduled to end on December 31, 2003, practitioners will want to follow its progress for ultimate statewide implications.

Interstate guardianships addressed

To solve the increasing problem of out-of-state or dual state guardianships, in 1999 the Commission on National Probate Court Standards—a commission of the National College of Probate Judges—expanded its 1993 Standards.

Two model code sections are designed to address the issues of how to manage the ward's property in another state, who will monitor a guardianship when either the guardian or ward resides elsewhere, and which court has jurisdiction when simultaneous petitions are filed in separate jurisdictions. One provision sets out procedures such as petition, notice, opportunity to object, and hearing. The other model statute creates procedures for the temporary recognition of a guardian's authority when the ward is temporarily located in another state or has property there.

Copies of the Final Report of the NCPJ Advisory Committee on Interstate Guardianships 1 (1999) can be obtained from:

National Center for State Courts
PO Box 8798, Williamsburg
VA 23197-8793

CLE seminar provides real answers to real problems

The Oregon State Bar Continuing Legal Education department and Elder Law Section will hold a seminar on Problem Solving in Elder Law Practice. The event will take place on Friday, September 22 at the Oregon Convention Center in Portland. Attendees will earn five MCLE credits and one Ethics credit.

The aging of the population is generating more and more clients who have particular legal challenges, decision points, and potential problems. Lawyers who can counsel clients through the legal, financial, and human experience of growing older will see their practices grow.

Problem Solving in Elder Law focuses on solutions to real problems and practical tips that can be put to use in your practice immediately. The program includes:

- The most recent developments in Medicaid planning for single and married individuals and Oregon's soon-to-be-implemented expansion of Medicaid estate recovery
- A novel set of "decision trees" for advising elderly clients and their families of the options and strategies surrounding crisis hospitalization and long-term care placement
- Issue-spotting problems and solutions for the most frequently encountered Social Security programs, including retirement benefits, Disabled Adult Benefits, SSDI and SSI benefits, and the malpractice trap of the combined SSDI/SSI recipient
- Advice on creating federal statutory trusts for disabled adults, pooled trusts, trusts for the "sole benefit" of the community spouse, and income cap trusts
- How to initiate, terminate, and get paid for temporary and permanent protective proceedings
- Analysis of the ethical issues most frequently encountered when advising elderly clients and their families

Join a faculty which includes many of Oregon's most experienced elder law attorneys for a highly practical program that will ensure your practice stays on top of the age wave. To register, use the form on Page 9, or call OSB CLE at 503.684.7413 or 800.452.8260, ext. 413.

Program Planners:

Tim Nay, chair, Law Offices of Nay & Friedenber, Portland
 Lisa N. Bertalan, Bryant Lovlien & Jarvis PC, Bend
 Kristianne M. Cox, Fitzwater & Fitzwater LLP, Clackamas
 Wesley D. Fitzwater, Fitzwater & Fitzwater LLP, Clackamas
 Steven A. Heinrich, Attorney at Law, Corvallis
 S. Jane Patterson, Attorney at Law, Gresham
 Jennifer L. Wright, Willamette Univ. College of Law, Salem

Problem Solving in Elder Law Practice

Friday, September 22, 2000
 Oregon Convention Center

777 NE Martin Luther King Jr. Blvd.
 Portland, Oregon

5 MLE credits and 1 Ethics credit

- 8:00 Check-in and Registration
- 8:45 Presentation of Facts Regarding Hypothetical Client
- 8:55 Lawyer's Decision-Making Tree for Hospitalized Patients
- 9:40 Medicaid I – Planning for the Individual
- 10:30 Medicaid II – Planning for Couples
- 11:10 Medicaid Planning Question & Answer Session
- 11:30 Social Security Issues in Elder Law Practice
- 12:00 Lunch
 The Elder Law Section will hold its annual business meeting from 12:45 to 1:15. Open to all registrants, but does not include lunch.
- 1:30 Update on Oregon Protective Proceedings
- 1:55 Using Statutory Trusts to Assure Quality of Life for Disabled Adults: Options and Requirements
- 3:10 Stumbling Blocks and Pitfalls: Spotting, Avoiding, and Dealing with Ethical Problems
- 4:00 Adjourn



OREGON STATE BAR
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Problem Solving in Elder Law Practice

**FRIDAY,
SEPTEMBER 22, 2000**

8:45 am - 4:00 pm

Oregon Convention Center
Portland, Oregon

5 MCLE credits and 1 Ethics credit

Cosponsored by the Elder Law
Section

Featuring:

- Real answers to real problems faced by elder law practitioners
- Medicaid I—new developments in income cap trusts
- Medicaid II—avoiding spousal impoverishment
- Decision trees for lawyers, care-giving spouse, hospital, and care facility following emergency hospitalization
- Answers to the most frequently asked questions about social security and retirement benefits
- The latest statutory trusts for disabled adults, including pooled trusts, under-65 disability trusts, and special needs trusts

This program focuses on solutions to real problems and practical tips that can be put to use in **your** practice immediately. Highlights include:

- The most recent developments in Medicaid planning for single and married individuals and Oregon's soon-to-be-implemented expansion of Medicaid estate recovery
- A novel set of "decision trees" for advising elderly clients and their families of the options and strategies surrounding crisis hospitalization and long-term care placement
- Issue-spotting problems and solutions for the most frequently encountered Social Security programs including: retirement benefits, Disabled Adult Benefits, SSDI and SSI benefits, and the malpractice trap of the combined SSDI/SSI recipient
- Advice on creating federal statutory trusts for disabled adults, pooled trusts, trusts for the "sole benefit" of the community spouse, and income cap trusts
- How to initiate, terminate, and get paid for temporary and permanent protective proceedings
- Analysis of the most frequently seen ethical issues inherent in advising elderly clients and their families

Save \$20 and get free shipping when you preorder the new OSB CLE publication *Elder Law* and register for this program! (Publication is scheduled for Fall 2000.)

Topics: helping your client plan for incapacity, acting when your client becomes incapacitated, helping your client understand the legal aspects of financial planning, using the Social Security and Medicare programs, guiding your client through health insurance and long term care choices, paying for long term care, what happens if your client is mistreated in a nursing home, ADEA and ADA, family law issues, and much more!

Registration Form

Problem Solving in Elder Law Practice

Name _____		Bar # _____	
Firm Name _____		Phone _____	
Address _____			
City _____	State _____	Zip Code _____	

REGISTRATION FEES:

<input type="checkbox"/> \$140 Attorney or non-member	\$ _____
<input type="checkbox"/> \$130 Elder Law Section Member	\$ _____
<input type="checkbox"/> \$95 New lawyer (admitted after 01/01/99) or legal assistant	\$ _____
<input type="checkbox"/> \$15 Season Ticket holder (Season Ticket No. _____)	\$ _____
<input type="checkbox"/> \$15 Luncheon	\$ _____
TOTAL REGISTRATION FEES (ELD00)(09-4565-757): \$ _____	

Note: There is a \$20 service charge for at-door registrations on the day of the program. **F**

Elder Law [Preorder this new OSB CLE publication today and save \$20, plus get free shipping!]

Your copy will be shipped upon publication of the book this fall. This discounted price is only available when you also register for this program.

_____ 2000 edition [206.20] \$145	\$ _____
_____ 2000 edition on CD-ROM [C206.20] \$145	\$ _____
_____ 2000 forms on disk (only with book purchase, included on CD) [206.80] \$30	\$ _____
TOTAL REGISTRATION AND BOOK ORDER: \$ _____	

PAYMENT OPTIONS:

Check Enclosed: Payable to Oregon State Bar.

Credit Card: Acct. No. _____ VISA MasterCard

Expiration Date _____ Authorized Signature _____

THREE WAYS TO REGISTER AND ORDER:

1. **FAX:** Fax this page, including credit card information, to (503) 968-4456. To avoid duplicate registration, do NOT mail a copy.
2. **PHONE:** To register with a credit card, call CLE Registration at (503) 684-7413, or toll-free in Oregon at 1-800-452-8260, ext. 413.
3. **MAIL:** Mail this form with payment to: Oregon State Bar, CLE Registration, P.O. Box 1689, Lake Oswego, Oregon, 97035-0889.

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The State of Access to Justice in Oregon **cites unmet legal needs of Oregon's seniors**

By Holly Robinson

According to the recently released report, *The State of Access to Justice in Oregon*, there is a significant unmet need for civil legal services among low and moderate income Oregonians. The report was commissioned by the Oregon State Bar and sponsored by the Oregon Judicial Department and the Office of Governor John Kitzhaber, M.D. The primary source of data used in the study is a legal needs survey of 1,011 low and moderate income persons conducted in the fall and winter of 1999-2000. Participants in the survey included 222 seniors, 81 of whom were considered "vulnerable seniors."

Key findings of the survey indicate that the highest needs for legal assistance arise in housing, public services, family, employment, and consumer cases. The need is great for all low and moderate income Oregonians, including seniors, for:

- advocacy to increase the quantity and quality of housing for low income people
- legal services to reduce the incidence of unlawful discrimination, enforce the residential landlord tenant act, and provide sufficient self-help information to assist in landlord tenant disputes and eviction actions
- assistance with public services and consumer cases

Private lawyers who participated in focus groups around the state frequently identified areas of unmet legal needs that may affect seniors: landlord tenant issues, consumer issues, abuse of elderly, and conservatorships. Also mentioned were wills and estate planning, contracts, Medicaid issues, and access to medical and dental services.

Social services providers and community leaders who participated in focus groups identified housing as the single greatest unmet legal need. They also identified the following issues that may specifically affect seniors: guardianships, consumer issues, and wills and financial planning.

Vulnerable senior legal needs reported at very high levels included will and estates and elder abuse and neglect. In a footnote, the report comments that "The legal need of this group is probably understated. Interviewers found it extremely difficult to gain access to care facilities to conduct interviews, and when able to do so, found residents reluctant to discuss problems with the care facility for fear of reprisal. Further, the elderly, in general, were found to be less likely to raise legal issues than the general population."

34 of the 222 seniors surveyed reported one or more legal issues in the elder abuse cluster, including financial, sexual, or physical abuse. Reported problems included being struck or yelled at, having clothing or effects taken or misplaced, receiving the wrong medication, not being given prescribed medications or therapy, and having problems with access to visitors.

Survey respondents reported that they obtained legal representation for fewer than 20% of their legal problems. The biggest single reason given was their belief that nothing could be done about their legal problems. They apparently lacked basic information about their legal rights and remedies, and 44% of the vulnerable elderly were not aware of the availability of free legal services.

Seniors face unique barriers when they have a legal problem, particularly more vulnerable seniors. They are less likely to perceive their problem as being a legal one; they are less likely to complain for fear of retribution or of not being liked; they are less likely to seek the services of an attorney for fear of the costs that may be involved or because they are uncomfortable talking with an attorney; or they may not know how to retain an attorney.

Holly Robinson, formerly the Legal Services Developer for the Senior and Disabled Services Division, is now Deputy Legislative Counsel for the State of Oregon.

Important elder law numbers

On Oct. 1, 2000:

- The average private pay rate used to calculate ineligibility based on transfer of assets will increase from \$3,320 to \$3,750 per month.
- The food stamp utility allowance used to figure excess shelter allowance will most likely increase from \$216 to \$224 per month. Adult and Family Services has asked for this increase, and is confident it will come through, but it had not been approved as of press time.

Resources for Elder Law attorneys

Events

Senior Expo
Friday, September 8 & Saturday, September 9, 2000
Oregon Convention Center in Portland
See article on page 12

“On Our Own Terms: Moyers on Dying”
September 10–13, 2000; 9:30 p.m.
Oregon Public Broadcasting TV
In this four-part PBS series, journalist Bill Moyers examines the issues and challenges faced by terminally ill people and their loved ones. Program Web site:
www.pbs.org/onourown/terms.

Problem Solving in Elder Law

OSB Elder Law Section CLE seminar
Friday, September 22, 2000
8:00 a.m.–4:00 p.m.
Oregon Convention Center in Portland
(Details on page 8)

First Annual National Aging and Law Conference

October 5-7, 2000
Arlington, Virginia
Sponsored by the AARP. Topics include access to banking and credit, fair housing laws, and ERISA benefits and pensions. Registration fee: \$200 for legal services and aging advocates; \$250 for private practice attorneys. Information: Ada Albright at AARP Foundation, PO Box 51040-NALC, Washington, DC 20091. Telephone 202.434.2197. E-mail aalbright@aarp.org

Caregiving documentary

October 11, 2000; 8:00 p.m.
Oregon Public Broadcasting TV
Documentary about the joys and difficulties of caregiving. Produced by the Northwest Osteopathic Foundation and Oregon Senior and Disabled Services.

The Changing Face of Legal Practice: A National Conference on “Unbundled” Legal Services

October 12-14, 2000
Baltimore, Maryland
This first national conference is open to advocates interested in creating an action agenda for legal services such as legal hotlines, advice-only legal clinics, lawyers as client coaches, lawyers as mediators, lawyers supporting pro se litigants, legal forms/information on the Web, and do-it-yourself kits. Contact Ayn Crawley, Director; Maryland Legal Assistance Network, 15 Charles Plaza, Suite 102, Baltimore, MD 21201. Phone 410.576.9494; fax 410.385.1831; email conference@unbundled.org. Conference Web site: www.unbundledlaw.org

Healthy Aging: Innovations for the Future

October 16-17, 2000
Sheraton Portland Airport
Oregon Gerontological Assn. Annual Conference
Information: 503.598.0711

2000 NAELA Institute

November 15-19, 2000
The Broadmoor
Colorado Springs, Colorado
For reservation information, contact
Navigant International Arizona
800.229.8731 or NAELA at 520.881.4005

Mental Health and the Law Conference

October 27-28, 2000
Doubletree at Lloyd Center; Portland, Oregon
Workshops for families of people with mental illness will address a wide range of issues. Contact NAMI of Multnomah County, 503.228.5692 or namiport@teleport.com.

On the Internet

Oregon Administrative Rules online
<http://arcweb.sos.state.or.us>

Oregon State Bar

<http://www.osbar.org>

Elder Law Section Web page:

<http://www.osbar.org/ProDevelopment/OSBSections/ElderLaw.html>

Elder Law Section Discussion List

To subscribe, send a message to:
orelder@lists.law.stetson.edu
Leave the subject line blank, and do not include a signature block.

The body of the message should be:

Subscribe orelder your first name your last name

Send messages to: orelder@lists.law.stetson.edu

Some guidelines for the discussion list:

- If you simply use your “reply” function in response to a message sent to you, your reply will go to all the members of the discussion list. You may want to respond only to the person who sent the original message. In that case, be sure to enter his or her e-mail address.
- If you are posting a question or message to the list, be sure to include your e-mail address in your post. If you want people to respond privately to you, say so.
- Avoid any implication of antitrust. Avoid discussions of pricing or fees.
- When quoting from other sources, include attribution.

Elder Law Section Business Meetings

Annual business meeting

Sept 22, 2000; 12:45 to 1:15 p.m.

**To be held during lunch break at CLE seminar
Oregon Convention Center, Portland**

Executive Committee Meeting

Oct. 20, 2000; 2:00 p.m.

Oregon State Bar, Lake Oswego

Volunteers needed Senior Expo offers opportunity to spread the word about elder law

The Elder Law and Estate Planning Sections are co-sponsoring a booth with the Oregon State Bar at the 2000 Senior Expo, Friday, September 8 and Saturday, September 9. The event, which will be held at the Oregon Convention Center in Portland, is a very large two-day trade show that also includes seminars, entertainment, and a senior job fair.

Our booth will feature OSB and section public education resources with special emphasis on information targeting senior citizens. Copies of the Bar's book *Legal Issues for Older Adults* will be available for purchase.

Volunteers are needed to help staff the booth in shifts both days. The show runs from about 9:30 a.m. to 5:00 p.m. each day. If you would like to volunteer, please contact Jennifer Maldonado at the Oregon State Bar by phone at (503) 431-6377 or by e-mail at jmaldonado@osbar.org.

Thank you for considering this important community service!

Newsletter Board

The *Elder Law Newsletter* is published quarterly by the Oregon State Bar's Elder Law Section, Richard Pagnano, Chair

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