



Elder Law Newsletter

**Volume 5
Number 2
Spring 2002**

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Establishing an elder law practice

By Kristianne Cox

According to the Oregon Office of Economic Analysis, 246,787 Oregonians will be age 75 or older this year. In another fifteen years, the number will have increased to 298,108. Many individuals in this age group will seek the knowledge and legal expertise of elder law attorneys.

Elder law is a general description covering several areas of law, including Medicare, Medicaid, estate planning, planning for disability, guardianship and conservatorship law, probate, trust administration, elder abuse, fraud recovery, and long-term care issues. Different elder law attorneys focus their practices on different areas of law. As

the population that needs legal help in these areas grows, the need for competent elder law attorneys grows. As more clients request help with elder law issues, established attorneys wonder how to add elder law to their existing practices, and new attorneys seek to develop elder law practices. But how does an attorney learn elder law?

Learn from others

Joining the Elder Law Section of the Oregon State Bar is an easy first step. Section members receive this quarterly newsletter, which contains helpful articles, topical articles, and information about available resources.

Internet discussion lists are also helpful. Elder Law Section members are entitled to e-mail elder law questions, comments, or announcements to other members of the group via a "Listserv" program. When other subscribers respond to a question, it can be like having several experienced mentors give advice. The e-mail discussion group has the benefits of speed and broad dissemination of questions to many elder law attorneys around the state. Be careful though of how specifically you describe a factual situation or reveal your intended strategy. The opposing party you describe today may walk into another subscribing attorney's office tomorrow. Information about the discussion list can be found on page 15 of this newsletter. The National Academy of Elder Law Attorneys (NAELA) also has a discussion list. Keeping up with the NAELA list can be a full time hobby. Information is available on the NAELA Web site at www.naela.org.

For Portland area attorneys, the free monthly elder law discussion groups sponsored by Multnomah County Legal Aid's Senior Law Project provide live speakers on elder law topics. There are two discussion groups: the Taylor Street group, which meets

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the first Thursday morning of each month; and the Lloyd Center Tower group, which meets the second Thursday morning of each month. In addition to information about specific subjects, these meetings provide opportunities to meet and talk with other Portland area elder law attorneys. To receive the monthly flyer that describes upcoming topics, contact Anne Stacey at 503.224.4094.

Know the relevant statutes and rules

If your chosen elder law areas will include probate (such as wills, administering decedents' estates, guardianships and conservatorships, trusts, and elder abuse), read, highlight, and tab with "Post-It" flags the relevant chapters in ORS Volume 3. If you plan to counsel clients on Medicaid, you will need the applicable Oregon Administrative Rules (OAR). Contact Ann Birch at 503.945.6089 and request a publication price list and order form for AFS and OMAP manuals and guides. Also bookmark the Adult and Family Services Division OAR search Web page at afsmanuals.hr.state.or.us/adminrules/search.htm.

Take advantage of CLE seminars

CLE publications provide detailed information about the various substantive areas of elder law and can be a good source of forms. The Elder Law Section and the OSB co-sponsor an Elder Law CLE presentation each year, usually in the fall. In recent years this CLE has focused heavily on Medicaid topics. In addition to CLE programs and their accompanying handbooks, in 2000 the OSB published an Elder Law CLE book (available both on CD-ROM and in a 3-ring binder format). The Oregon Law Institute (OLI) has presented several annual CLE programs on guardianships and conservatorships. The Multnomah Bar Association is another source of elder law CLE materials. Its *Probate Court Update CLE*, featuring one or more of the tri-county probate judges or commissioners, is always popular. The MBA tapes most seminars and sells the tapes and handouts. Both the written materials and audiotapes are needed to earn MCLE credit. For a list of available topics and sets, call 503.222.3275.

Before investing in CLE publications to stock your elder law library, decide which particular elder law areas appeal to you, and ask established elder law attorneys which publications they recommend. Purchasing

the audiotapes of CLE presentations can be a practical investment. Keep them in your car and listen to them over and over while you drive to the office. It's a quick and fairly painless way to gain new knowledge. You can claim MCLE credits for your driving time, too. Use MCLE Form 6 (on page 113 of the 2002 Bar directory) to keep track of individually screened tapes.

Read the literature

Elder law periodicals and newsletters are also useful resources. The *NAELA Quarterly* and the *NAELA News* are published by the National Academy of Elder Law Attorneys, Inc. For membership information, call 520.881.4405 or visit NAELA's Web site at www.naela.org.

The *ElderLaw Report* is popular with Oregon elder law attorneys. It is published 11 times a year by Panel Publishers, a division of Aspen Publishers, Inc. For subscription inquiries call 800.562.1973.

Also of interest is the AARP Foundation's quarterly *Elder Law Forum*. Contact AARP at 202.434.2151; Web site www.aarp.org/litigation/elf.html.

The National Senior Citizens Law Center publishes *NSCLC Washington Weekly* 50 times a year. Subscribers can choose to receive the Weekly via regular mail or as an e-mail attachment. Contact Christy Ross at 202.289.6976 or cross@nsclc.org.

Other useful publications are Regan's *Tax, Estate & Financial Planning for the Elderly*; Carlson's *Long Term Care Advocacy*; Begley & Barrett's *Representing the Elderly [Law & Practice]*; and Margolis's semi-annual *The Elder Law Portfolio Series*.

Tennessee elder law attorney Tim Takacs publishes the free *Elder Law eBulletin*, available by e-mail. Sign up for e-mail delivery at www.tn-elderlaw.com/telb.html. Back issues are archived on the site.

Volunteer for Senior Law Project

Nothing motivates an attorney to learn, however, like having a client with an actual issue. Many Portland area elder law attorneys cut their teeth on elder law issues through the Senior Law Project, a pro bono program offering 30-minute sessions of free legal counseling to county residents 60 years or older. The Senior Law Project is well established in Multnomah, Clackamas, and Washington counties. Clients are screened and scheduled for the volunteer attorneys, each of whom donates a three-hour block of time and meets with up to six clients at a local senior center, community center, or church. If your county or city does not have a Senior Law Project program, contact the state's new legal services developer, Pam Edinger, at 503.945.8999 and ask for help setting one up. Since many of the attorneys who attend the elder law discussion groups in Multnomah County support the Senior Law Project, new elder law attorneys trying to resolve legal problems for Senior Law Project clients may find willing mentors.

Learn about community resources

Good elder law attorneys help their clients not only by knowing the law, but also by being familiar with community resources. Grief counseling, providers of low-cost burials and cremations, and respite care providers are examples of services that older clients are likely to need. Start a collection of labeled file folders that contain articles, brochures, and pamphlets on topics and services that may be useful to your clients. When you counsel a client on spending down, and she thinks aloud about having work done on her house, can you tell her how she can check up on contractors? ¹ If your client can't understand a Medicare invoice, can you refer him to a free, trained State Health

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Insurance Benefits Assistance (SHIBA) volunteer? The next time you're at a senior center volunteering for the Senior Law Project, look through the center's collection of pamphlets. Take those that look interesting, and call the publisher to get more copies. Case managers are another good resource for learning about community services. Ask them whether programs exist to meet specific clients' needs.

Get your office in order

Elder law attorneys, like other attorneys in private practice, need to develop forms and office systems. For a motivating book on building systems for small businesses, read Michael Gerber's short work, *The E-Myth Revisited*. NAEA attorneys are so enthusiastic about Mr. Gerber's ideas that they had him speak at their November 2001 Advanced Elder Law Institute in St. Louis, Missouri. For a recent article on systems for an elder law practice, see Thomas D. Begley Jr. and Vincent A. Russo's "Creating Systems for the Elder Law Office."² Also see the PLF's free book, *A Guide to Setting Up and Running Your Law Office: Avoiding Malpractice through Efficient Office Systems*, 1999 Revision. A CD of forms and checklists comes with the book. The PLF also offers free and confidential assistance with office systems through its Practice Management Advisor Program. Call 503.639.6911 or 800.452.1639 for more information.

Many new attorneys are attracted to elder law in part because it lends itself to a home-office-based practice. For an interesting article on home-office law practices, see "The House Rules: Solo and Home-Office Law Practice," *Arizona Attorney* November 2001 issue, published by the State Bar of Arizona. Call 602.252.4804 or read the article online at www.azbar.org/ArizonaAttorney, by selecting "November, 2001" in the Past Issues window, and clicking on "Solo Lawyer Roundtable."

For those based out of a home office, a challenge can be finding a place to meet privately with clients. Check with local sole practitioners with traditional offices—they may be willing to rent you a conference room and copy machine privileges by the hour. Home visits with clients are also an option. To furnish your home office inexpensively, rent a van and make a trip to Ikea in Renton, Washington (Web site: www.ikea-usa.com).

Whether you are considering practicing from home or have a traditional office, bring yourself up to speed on the latest law office technology by visiting the Web site of attorney Dennis Kennedy (2001 Technolawyer of the Year) at www.denniskennedy.com.

Become a notary public

Get an application packet by calling 503.986.2200 or downloading it from www.sos.state.or.us/corporation/notary/notarynewcom.htm.

Make your office elder friendly

For the elder law attorney with a traditional office, anticipate and accommodate the physical limitations of elderly clients. Ideally, this means a ground-level office with curb cutaways for wheelchairs and walkers, and handicapped parking spaces near the office entrance. Avoid loose carpets and soft chairs in your office lobby. Firm chairs with sturdy armrests give older clients the leverage they need to get up. Consider buying an assistive listening device for your conference room. Not all clients with hearing deficiencies wear hearing aids, and not all hearing aids work effectively. For an overview of assistive listening devices, see www.shhh.org/ALDS/asld.cfm.

Have access to a large conference room, and learn to ask before the initial consultation how many people will be coming to the appointment. It's not unusual for adult children and grandchildren to accompany an older client who is visiting the attorney. If six family members are coming with your client, you'll want to know ahead of time.

Be aware of potential conflicts of interest

That relatives often attend an initial elder law office consultation brings up an extremely important issue: identifying your client and avoiding conflicts of interest. If you are counseling six people in your conference room, how many of them view themselves as your client? Spend time discussing whom you view as your client, the duties you owe to your client, and how that affects communications between you and your client. You may decide to advise the group that you will wait until after the consultation to decide which person you want as your client. Educate yourself about typical conflicts of interest that occur in elder law, and set up procedures to minimize conflicts and to respond to them if they do develop. Among elder law attorneys, there is growing concern that the potential for conflicts of interest is greater than previously recognized.

Footnotes

- 1 To check the complaint record of any prospective contractors, call the Construction Contractors Board at 503.378.4621 or check the CCB Web site at wwwccb.or.us
- 2 *The ElderLaw Report*, Vol. XIII, Number 4 (November 2001).

Kristianne Cox is an elder law sole practitioner in southeast Portland. She serves on the Elder Law Section's Agency and Professional Relations Subcommittee, and is a frequent volunteer for the Senior Law Project.

Practice tips on using interpreters

Representing the client with limited English

By Leslie Kay

According to a new report by the Census Bureau, the population of limited-English speaking elders is expected to grow rapidly over the next twenty-five years. As a consequence, you will likely employ both interpreters and document translators in your practice.

Hire a qualified interpreter

In order to hire a qualified interpreter, you need to make an initial assessment of what language skills your limited-English speaking client possesses. Suggested questions to make this determination are:

- Where was your client born and raised?
- In what countries has your client lived and for how long?
- How long has your client lived in the United States?
- What language(s) does your client speak?
- What is the level at which your client speaks the language?

Once you make this language assessment, hire a qualified interpreter. The interpreter should be a neutral professional who enables communication between attorney and client. Family members or friends of the client should never serve as interpreters because they may not be able to provide detached and accurate interpretation. An interpreter is much more than a person who merely knows the source language. Interpretation from a source language to English requires conserving the language level, tone, style, and intent of the speaker. This task requires acute memory, concentration, and analytical skills. Legal interpreting involves familiarity with legal terms, concepts, and procedures. A competent interpreter must have the ability to orchestrate these linguistic tasks.

Interpreter services can be found in the Yellow Pages under "Translators and Interpreters." Your local courthouse will have lists of interpreters certified by the State of Oregon.¹ The most recent roster of certified interpreters can be obtained from the Certified Interpreter Program in the office of the State Court Administrator. Contact Kerry Hammerschmidt at 503.986.7025. In the future, the list may be posted on a Web site now under development. If you have exhausted court-generated lists, interpreter services, or referrals by other attorneys, you may want to turn to telephonic or televideo language line services like the AT&T Lan-

guage Line Service™, which can be reached at 800.782.4921. It provides 24-hour service in 168 languages, although the interpreters are not necessarily certified.

Counsel should retain the interpreter and bill interpreter services as "costs" after discussing this matter with the client. Hourly fees can range from \$35 to \$280.

Once you have hired an interpreter, establish that your client is able to understand you.

Maximize accurate communication

Interpreters, regardless of bilingual and bicultural skill, must constantly weigh choices in search of the best ways to convey shades of meaning and speaker intent. You must be aware of the task faced by an interpreter and participate in maximizing the accuracy of the interpretation.

Address a limited-English speaking client directly

Avoid addressing the interpreter with phrases like "tell him that..." and "ask her if...." Counsel should never use this third-party form of address. Instead, maintain eye contact with your client, not the interpreter, and speak directly to your client. Think of the interpreter as a language conduit. Position the interpreter next to you, if possible, so that the client can maintain eye contact with both of you.

Be aware of your language patterns

Avoid the passive voice and double negatives: "Isn't it true that you have not had any contact with your niece for 20 years?" This form is often alien to limited-English speakers and a "yes" or "no" answer will have a 50 percent chance of being wrong.

Indicate the gender of neuter English words that have a feminine or masculine form in the language spoken by your client. Examples of words of this type in Spanish are "cousin," "friend," "teacher," "supervisor."

Clarify pronouns. In English, the second person pronoun "you" is both singular and plural. In other languages, such as Spanish, French, and Mandarin, the singular second person pronoun may be different from the plural second person pronoun. You can avoid confusion by refining the use of "you" in English by saying "you yourself" or "you



Leslie Kay is the staff attorney for the Senior Law Project at the Multnomah County Office of Legal Aid Services of Oregon. Prior to joining LASO last year she spent ten years representing the Spanish-speaking community with the law firm of Linda Friedman Ramirez P.C. in Portland.

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Communicating with clients who are hard of hearing

By Wayne Seely

Inevitably, some clients with whom an elder law attorney meets are hard of hearing. This can pose some challenges to the communication process.

As a person who has had severe hearing loss for the past 40 years, I have learned to cope with that loss and also remain involved in a hearing world. This is often not easy, since so much of our daily life activity requires the use of hearing.

People who are hard of hearing sometimes have hearing aids, but many do not. Approximately 70% of those who could benefit from hearing aids do not have them. This may be due to the cost, past negative experience, or a perceived stigma attached to using a hearing aid. Even when clients have hearing aids, you may find they do not eliminate communication difficulties, and hard-of-hearing people may try to fake understanding to avoid embarrassment.

Reading lips and writing notes are not always effective or accurate ways to communicate with clients.

Meeting ADA requirements

Under the Americans with Disabilities Act (ADA), attorneys have the responsibility to provide accommodations that may be needed to communicate. Both Title III of the ADA and the U.S. Department of Justice regulation pursuant to Title II, 28 C.F.R. Part 36, specifically include the offices of lawyers in the definition of public accommodations.

Under Title III, public accommodations are required to provide auxiliary aids and services to ensure effective communication. Assistive devices and real-time captioning are the most common auxiliary services. Devices that may improve communication include assistive listening systems that make sounds louder and lessen the impact of background noise and reverberation. They work by placing a microphone close to the speaker's mouth and transmitting the sound directly to the listener's ears. The device uses a hard-wired system, an FM radio signal, or infrared light to transmit the voice. With the microphone close to the speaker's mouth, background noise and reverberation are kept to a minimum.

Real-time captioning enables the person to read what is being said. A specially trained court reporter uses a steno machine connected to a computer system and software to generate captions the hard-of-hearing person can read. This is especially useful in a courtroom setting, where the use of multiple microphones is difficult, and having line of sight with the lips of all speakers may not be possible. If you will have any court appearances with your hearing-impaired client, it is important to notify the court in advance that you require assistance.

Ways to improve communication

There are some specific things you can do to improve communication with a hard-of-hearing person.

- Meet in quiet surroundings.
- Have good light on your face when you speak.
- Avoid sitting in front of a window.
- Have one person speak at a time.
- Make sure speakers' lips are visible. Mustaches should be trimmed. Make sure there is nothing else in front of the face or lips.
- Be relaxed and do not shout.
- Repeat or rephrase if not understood.

Wayne Seely manages the Deaf and Hard of Hearing Access Program at the Oregon Disabilities Commission.

Limited-English clients

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and Mrs. Jones," or "you, Mr. Ramirez."

Document interpretation and translation

If you will be reviewing documents with your client that have not been translated into the language the client speaks, provide your interpreter with copies of these documents beforehand to maximize the accuracy of the interpretation when you meet with your client.

Attach a certification affidavit signed by the interpreter and your client regarding the fact of the interpretation of the document into the client's native language.

Interpreters in the courtroom

You can maximize the effectiveness in the courtroom by positioning the interpreter so that the interpreter can hear witnesses and they can hear the interpreter. Schedule breaks for the interpreter every hour or so. Be aware of your own speech patterns as well as those of opposing counsel. Do not turn your back to the interpreter when making opening or closing arguments. Do not speak rapidly. Make questions to witnesses as brief and unambiguous as possible. Double negatives should be avoided, as should two-part questions and strings of subordinate clauses. Urge the court to record the interpretation so that it can become part of the record for appeal². The reporter's transcript will only contain questions and answers after interpretation into English.

Footnotes

1 ORS 45.272 et seq establishes a program for the certification of court interpreters. The program establishes minimum competency requirements, testing, and educational programs on ethical, substantive, and procedural issues. The law creates two classes of court interpreter—certified and qualified—and allows the court to appoint a "qualified" interpreter when a "certified" interpreter is unavailable. The law provides for the appointment of interpreters for persons who are unable to readily understand or communicate in the English language because of a limited-English-speaking cultural background or a disability.

2 Like other complaints about the conduct of trial, challenges to the competence of an interpreter or the accuracy of the interpretation must be made in a timely fashion.

Working with clients who have vision impairment

By Carole Barkley, Newsletter Editor

Most elder law clients are middle-aged and older, and many have some degree of vision impairment. This may be as simple as needing reading glasses, or as complicated as significant vision loss due to macular degeneration or diabetic retinopathy. Since so much that goes on in a lawyer's office involves paperwork, it is important to make accommodations for people affected by vision impairment.

According to Evelyn Maizels, executive director of the nonprofit organization Vision Northwest, three things make reading easier for a person with limited vision:

- Good light
- Good contrast
- Magnification

Cast some light on the subject

Make sure you have adequate lighting in your office. You should have more than one light source available, since individual eyesight varies. General room lighting should be supplemented by a lamp on or near the table where your client will sit to review documents. Bright halogen light is helpful to many people, particularly those with macular degeneration; but it may create too much glare for a person with cataracts or diabetes-related retinal atrophy.

Put it in black and white

Contrast is very important. Print all documents in black or dark blue ink on white paper. Sometimes, putting a sheet of yellow film over a page makes it easier to read.

Make it bigger

According to Ms. Maizels, a sans serif type is best for persons with low vision. Arial, Verdana, and Helvetica are common sans-serif computer fonts. Make the type large: 14 to 16 points. "You'll use lots of paper," she says.

Take a look at your business card. Can a client who does not see well read it easily? If not, consider having a second version available with larger type.

What about magnifiers?

Magnification requirements vary widely from one person to another. Both the Casey Eye Institute and Vision Northwest point out the impossibility of trying to provide a magnifier that will work for everyone. There are dozens of options, with various combina-

tions of magnification power and light source. Advise your clients to bring their own magnifiers, if they use them.

The degree of magnification your client requires will affect how quickly he or she can read a document. Low magnification devices cover a wider field of vision. When type is highly magnified, the reader may be dealing with one letter at a time.

Signing on the line

Sometimes it is difficult for a client to see the place where he or she is to sign a document. A signature guide is a plastic card with a cutout that can be placed over the signature line. You can get one from the Oregon Commission for the Blind, phone 503.731.3221.

For signing documents, experts recommend the Sanford 20/20 easy-to-read pen. In addition to inscribing a bold signature, it doesn't bleed, doesn't spread, and doesn't dry up if left uncapped.

Just ask

It is important simply to ask your clients whether they will require assistance and what kind. If you send out an informational questionnaire before a client comes in for the first time, be sure it is printed in large type, and include questions that will alert you to the need for special accommodations.

Vision Northwest provides practical help

Every elder law attorney should be aware of community services available to clients. Vision Northwest is one such service. It is a nonprofit organization dedicated to helping those affected by vision impairment and providing information and support for caregivers and family members.

Vision Northwest employs a specially trained occupational therapist who works with individuals to identify lighting, special equipment, and skills that make it easier to live independently.

The organization also provides special workshops for caregivers and families, to help them understand the effect of vision loss and how best to help. It facilitates peer support groups throughout Oregon and southwest Washington, and operates a 24-hour telephone line which provides recorded TV listings, grocery ads, and other information (503.684.2849 or 800.422.7787).

Vision Northwest also operates a retail store in Tigard, which carries a wide variety of low-vision accessories. Hundreds of items are available, such as talking clocks and calculators, a telephone that tells you the number you have just entered, large-button TV remote controls, a talking medication sleeve that reports what is in the bottle and how to use it, oversize check registers and check-writing guides, message recorders, and many kinds of specially-adapted household gadgets. The store has just about every kind of magnifier available, including one that attaches to a TV set, so that a person can see an enlarged version of a document on the TV screen. There is also a free lending library of popular films that have been modified to include narration as well as dialogue.

Vision Northwest and its store are at 9225 SW Hall Boulevard. The phone number is 503.684.8389 or 800.448.2232.

Understanding SSD and SSI

By Alan Stuart Graf

As an elder law attorney, it is important for you to know whether your client is receiving Social Security Disability Benefits (DIB or SSD) or Supplemental Security Income (SSI). They are not the same. DIB-SSD payments are not affected by a client's resources, while SSI payments are affected both by resource and income changes. In addition, DIB-SSI benefits, while not affected by a client's resources, may be affected by additional sources of income such as other disability program payments.

For example, if your client is about to receive an inheritance that will raise his or her resource amount over \$2,000, the funds received will in all probability disqualify your client from receiving continuing SSI benefits. Trusts may be designed to circumvent this disqualification. [See 20 C.F.R. § 416.1201(a)(1).] On the other hand, the receipt of an inheritance, gift, or legal settlement will not affect a DIB-SSI client's continuing eligibility for funds.

If the client attempts to go back to work, he or she can earn up to \$740 per month without losing eligibility for funds for an indefinite period of time. Under DIB-SSI, the client's \$740 per month earnings will not be offset against disability benefit payments. Under SSI, there will be an offset of about one-half of the earned income against benefits, providing that unearned income is generally offset dollar for dollar against benefits. [See 20 C.F.R. § 416.1112 for details, and see 20 C.F.R. 416.1120-1121.]

The client is entitled to a nine-month trial work period at any time during the alleged disability under both programs. Months worked are cumulative. During this trial work period, the client can earn above the \$740 a month limit without endangering disability eligibility under both DIB-SSI and SSI. DIB-SSI disability payments will continue. SSI payments, however, will be offset by the money earned.

If your client is uncertain as to what program he or she is on, a call to your local Social Security office at 503.326.5019 should clarify matters. Have your client with you when you call, since SSA will not release information without the client's permission. Ask the client if he or she has the letter SSA sent out when the claim was approved, detailing the type of benefit, the monthly benefit rate, and any deductions. The client may also have the annual SSA notice entitled "Your New Benefit Amount" that shows the

type and amount of benefits to be paid for the next calendar year.

The two federal disability programs—their basic characteristics and differences

The Social Security Act includes 21 titles. The disability programs found in Title II are Disability Insurance Benefits (DIB—otherwise known as SSD), Disabled Adult Child (DAC), and Disabled Widow (DW). The disability programs found in Title XVI are Supplemental Security Income (SSI), which includes Child Disability Benefits.

Title II: DIB (SSD) disability benefits

SSD benefits under Title II are based upon a worker's past contributions to the Social Security fund. These contributions are paid through the FICA payroll tax or self-employment tax. The worker attains "insured" status after paying a certain amount into the fund for a period of time related to the worker's age. A worker can claim disability benefits for any time period he or she was insured under the plan.

If the worker is insured, the next step is to prove disabled status. The worker has the burden of proving that she or he has a medically determinable impairment or combination of impairments that is severe and has lasted or can be expected to last for 12 consecutive months or will result in death. A five-step analysis is required.

1. The worker must prove that he or she has not earned any money over substantial gainful activity (SGA)—equal to \$740 per month or the equivalent in work effort—in the time period disability is claimed. A person is allowed an unlimited amount of unsuccessful work attempts in this time period, which can last up to six months.
2. The worker must have a severe impairment which more than minimally limits ability to work.
3. The worker must have an impairment whose severity matches one of Social Security's listed impairments.
4. If the worker does not have a listed impairment, he or she must show that the impairment prevents return to the past relevant work (PRW) of the last fifteen years.
5. If a person cannot return to past work, the burden shifts to the commissioner, who must show that the claimant cannot work



Alan Graf is a practicing Social Security lawyer who co-authored the book "Perfecting the Social Security Disability Claim" (OSB-2001), and who serves as co-chair and founder of Oregon Social Security Claimants Representatives Organization (OSSCR) in Portland. You may send e-mail with questions to peopleslawyer@qwest.net

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Understanding SSD and SSI

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full time and sustain work at any jobs listed in the national economy, considering age, education, and past work. If your client is over fifty years old, a transferable skills analysis comes into play. If your client is limited to part-time work, he or she will be found to be disabled under the Act. [See *Willis v. Callahan*, 979 F. Supp. 1299, 1305 (D. Or. 1997) citing *Rodriguez v. Bowen*, 876 F.2d 759, 763 (9th Cir. 1989).]

The amount of cash benefits under Title II that a disabled worker will receive varies with the worker's contribution to the system. Once awarded, SSD benefits begin after a five-month period subsequent to the date of the alleged onset of disability. Once the waiting period has been calculated, retroactive benefits can be issued for up to 12 months before the date of the worker's application.

The Title II beneficiary also is entitled to Medicare health insurance similar to that provided for retirees. Medicare does not start until 24 months after disability cash benefits have been received. That means that the beneficiary will not receive Medicare until 30 months after date of onset (five month waiting period plus the 24 month disability payment period).

Title II beneficiaries have an affirmative duty to report earnings. As noted above, they are allowed a nine-month trial work period in which they will still receive benefits. When that one-time trial period is successfully completed, benefit eligibility may be terminated.

Reductions in benefits can also occur from entitlement to other benefit programs and other earnings. [See 20 C.F.R. § 404.407 through 404.416 for details.]

Title XVI: Supplemental Security Income (SSI)

The Supplemental Security Income program guarantees a minimum income for persons with low income and resources on the basis of age (65 and older), blindness, or disability. The current federal rate of payment for 2002 is \$545 per month.

Most states, including Oregon, also provide Medicaid for eligible claimants. In order to be initially eligible for SSI the claimant:

- must be a resident of the U.S. or Northern Marianas Islands
- must be a citizen or meet the eligibility requirements under the 1996 Welfare Act and 1997 Balanced Budget Act

- must have less than \$2,000 in countable resources (\$3,000 for a couple).

Also, any income received by a claimant either in cash or in kind that could be used directly or by conversion to meet the claimant's basic needs can reduce the benefit amount to zero, thus making the individual financially ineligible for SSI. Resources excluded as countable include the home in which the person lives, one car, personal and household goods under \$2,000, and others. [See 20 C.F.R. § 416.1210.]

If an SSI claimant makes it past these hurdles, the claimant (like the SSD claimant) must prove that he or she has a medically determinable impairment or combination of impairments that is severe and has lasted or can be expected to last for 12 consecutive months or result in death. The SSI claimant must also go through the five-step analysis cited above to prove disability. This does not apply to claimants over 65.

Once a claimant has qualified for SSI payments, an increase in resources or income can serve to disqualify him or her from continuing payment of benefits. [20 C.F.R. § 416.1205.] An SSI beneficiary who receives any money or property has a duty to report what he or she received to SSA, regardless of whether it comes from wages, government benefits, a gift or inheritance, or the sale of something.

Beneficiaries can receive both SSD and SSI payments although the two payments offset each other. Both of these programs are governed through statutes, regulations, administrative rules, internal memoranda, and case law. More information about both of these important disability programs can be found at the Social Security Administration's Web site at www.ssa.gov.

Elder Law Section member news

Kara Daley recently opened a law office in Corvallis, where she focuses on elder law and senior needs, as well as business and corporate work. Her phone number is 541.738. 2445 and her e-mail address is k2_daley@yahoo.com.

Pamela K. Edinger is the new Legal Services Developer at Oregon's Seniors and People with Disabilities Service. After moving from Seattle in 1992, she worked at the Oregon State Supreme Court and then as a Senior Assistant Attorney General in the General Counsel Division of the Department of Justice. Since 1998, she has been in-house counsel for a financial planning software company. The Legal Services Developer ensures there is adequate, effective and high quality legal assistance available to older persons in the state. This includes working with legal services providers, elder law activists, ombudsmen and the Bar to expand and improve direct legal representation. Edinger welcomes input from any members of the Elder Law Section. Phone: 503.945.8999, e-mail: Pamela.K.Edinger@state.or.us

Kitri C. Ford, a shareholder at Bryant Lovlien & Jarvis in Bend, has joined her firm's elder law and estate planning practice. Prior to 2001, her practice focused on civil litigation. Ford has been a member of the Oregon State Bar since 1991 and of the Washington State Bar since 1989. Before obtaining her law degree she practiced as a Registered Nurse.

Help with Medicare supplement choices

By Margaret L. Scott

Medicare does not pay for everything. Therefore, people usually buy insurance to go along with Medicare. The options are:

- Standardized Medicare supplements, a.k.a. "Medigap"
- Medicare + Choice (M + C)
- Cost Health Maintenance Organizations (HMOs)
- Employer Group Health Plans (EGHP)

All insurance choices must be reviewed carefully, comparing coverage, cost, and company information, but comparisons can be tricky. Fortunately, the state offers help with sorting out the various options through its Senior Health Insurance Benefits Assistance (SHIBA) program.

Medigap

The Omnibus Budget Reconciliation Act (OBRA) of 1990 created 10 standardized Medigap plans, A through J. An insurer may market one or more of the standard plans. Plan A is the most basic and Plan J the most comprehensive, with the other plans falling in between. Plan A offers basic core benefits which are available in all 10 plans.

Some plans pay Medicare's hospital deductible. Some pay Medicare's coinsurance for days 21-100 of care in a skilled nursing facility. Some plans pay for emergency care on trips outside the U.S.

Other plans pay Medicare's \$100 per calendar year deductible for medical services, although for this benefit one should calculate whether the premium is going to cost as much as or more than the maximum benefit the beneficiary can receive.

A plan may pay for short-term personal care services when Medicare is paying for home health care services after an illness, injury, or surgery, provided certain requirements are met.

Under federal law, doctors who do not accept Medicare assignment cannot charge more than 115% of the Medicare approved amount. An available benefit pays the difference between Medicare's approved amount and the 115% limit. However, if most or all of the Medicare beneficiary's doctors accept Medicare assignment, he or she may not need this benefit.

Some plans cover \$120 per year for health care screening and other preventive health services, as long as they are ordered by the beneficiary's physician. Again, weigh the premium versus the benefit.

Several plans provide 50% coverage for prescription drugs, after a \$250 deductible. The most two of these plans will pay for drugs is \$1,250 per year, so to get the full benefit a person must have at least \$2,750 in yearly drug costs. Another plan pays up to \$3,000 per year, but to get the full benefit one must have at least \$6,250 in drug costs. The beneficiary must file his or her own claims, so keeping good records of prescription drugs is essential.

For all Medigap plans, the beneficiary pays both the Medicare Part B premium and a premium to the insurance company. The beneficiary may see any Medicare approved physician.

Medicare + Choice

In Oregon, M + C plans include Medicare Managed Care Plans (MCO), a Provider Sponsored Organization (PSO), and a Private Fee for Service (PFFS) Plan. In most M + C plans the beneficiary must use plan providers. However, in a PFFS plan, beneficiaries can use any Medicare approved provider who agrees to accept the terms and conditions of the plan. In an M + C plan enrollees must live in the geographical area of the plan, not have end-stage renal disease when they join the plan, pay the Medicare Part B premium and a plan pre-

mium, pay coinsurance and sometimes deductibles, and follow the plan's rules.

Other options

Another option in some areas of the state is Cost Health Maintenance Organizations (HMOs). Cost HMOs are not M + C plans. In a cost plan, enrollees must live in the geographical area of the plan, not have end-stage renal disease when joining the plan, pay the Medicare Part B premium and a plan premium, pay coinsurance and sometimes deductibles, and follow the plan's rules. However, enrollees may use providers outside of the plan. Medicare will pay subject to Medicare limits and the enrollee will be responsible for the coinsurance and deductibles as if he or she were in traditional Medicare.

A person may also be eligible for an Employer Group Health Plan (EGHP). EGHPs vary, based on employer contracts.

SHIBA helps sort it out

To help your clients make sense of all the options, the State of Oregon Department of Consumer & Business Service provides the Senior Health Insurance Benefits Assistance program (SHIBA). SHIBA is funded by the Centers for Medicare & Medicaid Services' State Health Insurance Assistance Program, and the State of Oregon.

SHIBA volunteers across the state provide confidential, uniform, and objective health insurance assistance to people with Medicare (Medicare beneficiaries) and their representatives. They answer general Medicare questions, help with Medicare and Medicare + Choice appeals, explain insurance options, identify potential insurance violations, and refer people to federal, state and county offices. There is no cost for SHIBA assistance. To find local volunteers, visit the SHIBA Web site at www.oregonshiba.org or call 800.722.4134.

SHIBA also has two helpful brochures: *Oregon Consumer Guide to Medicare Supplement Insurance & Medicare + Choice* and *Your Medicare Health Plans*. These can be downloaded at the Web site or ordered in alternative formats by calling 503.947.7980.

Margaret Scott is one of two SHIBA Field Officers who conduct outreach to people with Medicare and their representatives throughout the state. She oversees approximately 10 sponsoring agencies and 100 coordinators and volunteers in northern Oregon.

Social Security's representative payee program

By Penny Davis, Portland

An elder law practitioner must be aware of the representative payee program of the Social Security Administration (SSA). The SSA does not recognize the authority of an agent under a power of attorney, no matter what the document says. The SSA also does not recognize the authority of a guardian or a conservator. A conservator may first learn about the SSA's representative payee program when he or she tries to deposit benefit checks into the newly opened conservatorship account.

How the program works

If the SSA determines that a person who is entitled to Social Security or Supplemental Security Income (SSI) benefits is a minor, legally incompetent, or otherwise mentally or physically incapable of managing his or her benefits, SSA will appoint a representative to receive and manage benefits.

The SSA gives preference to the guardian or conservator when appointing a representative payee. The agency also considers the relationship with the beneficiary. [20 CFR 404.2020; 404.2021; 416.620; and 416.621]

If there is a guardian or conservator, SSA will accept a certified copy of the order that determined incompetence as proof of the need for a representative payee. [20 CFR 404.2015 and 416.615] Otherwise, the SSA will get statements from the beneficiary's doctors and others to make that determination. In fact, the representative payee program may be an alternative to conservatorship if the beneficiary's only asset is Social Security or SSI payments, or if other assets are being managed under a trust or a power of attorney.

A potential representative payee can contact SSA by calling 800.772.1213, making a trip to a local office, or going online to www.ssa.gov. The Request to Be Selected as Payee is form SSA-11-BK.

The SSA notifies the beneficiary of its intent to name a representative payee. The beneficiary can appeal the decision to make payments to a representative payee or the decision to name a particular payee.

Fiduciary requirements

The representative payee has the usual fiduciary duties with regard to finances. The SSA recommends that payments be kept in a bank account titled "[Representative Payee's name], representative payee for [Beneficiary's name]."

The agency requires the representative payee to complete form SSA-623 each year, which summarizes receipts and disbursements. SSA mails the form to the representative payee. The conservator's annual accounting or the guardian's annual report cannot be substituted for the SSA form.

Supplemental Security Income (SSI) Benefit Standards	Eligible individual \$545/month Eligible couple \$817/month
Medicaid (Oregon)	Asset limit for Medicaid recipient \$2,000 Burial account limit \$1,500 Personal needs allowance in nursing home \$30/month Room & board rate for community-based care facilities \$446.70/month OSIP Maintenance Standard for person receiving in-home services \$546.70 Long term care income cap \$1,635/month Community spouse minimum resource standard \$17,856 Community spouse maximum resource standard \$89,280 Community spouse minimum monthly maintenance needs allowance \$1,452/month Excess shelter allowance Amount above \$436/month Food stamp utility allowance used to figure excess shelter allowance \$246/month Average private pay rate for calculating ineligibility for applications made after October 1, 2000 \$3,750/month
Medicare	Hospital deductible per illness spell \$812 Skilled nursing facility co-insurance for days 21-100 \$101.50/day Part B premium \$54/month Part B deductible \$100/year

Important elder law numbers

January 1, 2002

Please note:

The chart published in the Winter 2002 issue contained an error in the room & board rate for community-based care facilities

Potential conflicts of interest

By Dady K. Blake

A recent Bar disciplinary ruling, (*In Re Snell*, Or. Sup. Ct, no. 99-49; August 6, 2001), has increased awareness by elder law attorneys of the potential for conflicts of interest. Recent discussions on this topic between well-established and respected elder law attorneys alerted the author to the fact that there is no clear consensus on elder law ethics, and in particular, conflicts of interest. This article is intended to start a dialogue and possibly (and perhaps optimistically) encourage the formation of a consensus on various ethical issues related to elder law practice.

For the purpose of discussion, I present a hypothetical situation.

Initial representation of husband and wife

The elder law attorney represents an elderly couple regarding their estate planning. Included in the discussion of estate planning is Medicaid planning. Among the estate planning and Medicaid planning documents prepared by the attorney are provisions that allow each spouse, as agent or trustee, to transfer assets to him/herself (i.e., self dealing), in order maximize the preservation of assets by a well spouse in the event of long-term care, to establish or amend trust in order to preserve assets for the well spouse, and to nominate each spouse to serve as conservator or guardian for the other.

Assumptions:

- 1) Neither spouse has awareness of an illness that portends a future need for long-term care.
- 2) There are no concerns regarding the "capacity" of either spouse.
- 3) There are no children from a former marriage or outside the marriage.
- 4) The customary disclosure re potential of conflict of interest in estate planning for a couple is discussed by the attorney and dual representation is consented to by both clients.

Later representation of wife only

Some time later, the wife calls and indicates to the attorney that her husband now needs long-term care. The attorney determines that the husband is no longer able to make decisions effectively for himself. One or more of the following scenarios occurs.

1. The elder law attorney meets with the wife to revisit her estate planning in light of the new situation. The attorney advises her as to changes in Medicaid rules and addresses changes to her estate planning documents.
2. The attorney assists the wife, in her capacity as fiduciary (e.g., agent, trustee) for her husband, to transfer assets into her name alone and maximize the couple's resources for her benefit. This may include drafting a deed to transfer the house held by the couple to the wife alone, amending an existing trust, creating a trust, and withdrawing assets from a joint trust into the wife's name alone. All these activities are authorized under the terms of the husband's estate planning documents (prepared by the same attorney) and represent the attorney's understanding of the husband's prior stated wishes.
3. The attorney prepares a petition for the wife for spousal support in order to increase resource or income preservation for the wife over that allowed by Medicaid rules. The attorney advises the wife that her husband will need his own attorney, because an attorney cannot advise both husband and wife in this matter, since they are opposing parties. The preservation of assets for the wife is consistent with the attorney's understanding of the husband's prior stated wishes.
4. The elder law attorney prepares a petition for the wife for the appointment of a conservator and/or guardian for the husband (or other protective proceeding). Again, assume that the attorney has prepared the nomination of a conservator/guardian, and the above appointment is consistent with the husband's nomination.

Is it appropriate for the elder law attorney to represent the wife?

In the above scenarios, the wife is the current client and the husband is (arguably) a former client. Rules related to conflicts of interest provide generally that an attorney shall not represent a client in the same or a significantly related matter when the interests of the current and former clients are in actual or likely conflict. [See OSB DR 5-



Dady K. Blake is an elder law attorney in SE Portland. She is member of the Executive Committee of the Elder Law Section and currently serves as co-chair of the Section's Legislative Subcommittee.

Continued on page 12

Conflicts of interest

Continued from page 11

105(C) (conflicts of interest between current and former clients); ABA Model Rule of Professional Conduct 1.7] A lawyer may represent a client in instances otherwise prohibited by DR5-105(C) when both the current client and the former client consent to the representation after "full disclosure." Full disclosure requires an explanation sufficient to apprise each client of the potential adverse impact on him or her, a recommendation by the attorney to seek independent legal advice to determine whether consent should be given, and that consent to representation be contemporaneously confirmed in writing by each client. [See DR 10-101(B)]

Scenario 1: Continued representation of wife

My opinion is an unqualified *yes*. Representation of the wife is appropriate. There is neither a likely or actual conflict of interest presented.

Scenario 2: Representing wife as fiduciary for former client

In my opinion, this is a qualified *yes*. Representation of the wife may be appropriate. While the attorney cannot assist her in breaching any of the duties that she owes her husband as his fiduciary¹, based on the facts provided the attorney should be able to continue to represent the wife as fiduciary for her husband.²

Practice Tip: An attorney should, in the course of initial representation of husband and wife, seek written authorization to continue to represent either spouse in his or her capacity as fiduciary for the other.

Scenario 3: Representing current client petitioning for spousal support from former client

An unqualified *no*. In my opinion, it is inappropriate for the attorney to represent the wife in her capacity as petitioner for support. Absent consent of both wife and husband following full disclosure, the attorney should not represent the wife. In the facts presented, the husband is not able to give meaningful consent to the attorney's representation of the wife. Husband and wife are opposing parties in the matter before the court, that matter is substantially related to prior representation, and there is an actual or likely conflict of interest present.

Discussion Point: Elder law attorneys have discussed the possibility of advance disclosure and consent to this type of representation. The chief problem with advance disclosure and consent is that clients and attorney may not know at the time of consent the facts related to the later potential conflict, and hence would be unable to give a fully informed consent.

Scenario 4: Representing current client petitioning for conservatorship/protective proceeding for former client

Again, my opinion is an unqualified *no*. It is inappropriate for the attorney to represent the wife in her capacity as petitioner for protective proceeding over her husband without both parties' consent. (See Scenario 3.) It would also be inappropriate for an attorney to represent anyone else as petitioner for a protective proceeding over the husband, who is the attorney's former client.

The *In Re Snell* decision

In the recent disciplinary decision, Oregon attorney Susan Snell represented a client in petitioning for conservatorship over a former client. Ms. Snell had represented the former client related to estate planning, and had in the course of that representation prepared a Nomination of Conservator, wherein her former client nominated Ms. Snell's current client. Ms. Snell did not get the consent of either her former or current clients related to her representation of the petitioner in the conservatorship proceeding. The Stipulation for Discipline states that Ms. Snell's action of petitioning for conservatorship "was significantly related to [Snell's] prior representation of [her former client] in her estate planning."

Additionally, the stipulation states that representation of petitioner "resulted in an actual or likely conflict of interest between a current and a former client." One of the mitigating factors noted in the stipulation was that Ms. Snell had sought ethics advice from the Bar before undertaking to represent the petitioner.

Conclusion

I do not expect this to be the last word on this topic and welcome your comments at dady@dsl-only.net. If there is sufficient input, I will compile the responses and report them in a future issue.

Footnotes

- 1 Wright, Jennifer L., "Stumbling Blocks and Pitfalls: Spotting, Avoiding, and Dealing with Ethical Problems," OSB Elder Law CLE, Chapter 8, 8-2 (2000) Also see Oregon Formal Ethics Opinion 1991-119 and 1991-62.
- 2 ABA Model Rules appear to allow an attorney to work through an agent in representing a client. Brisk, William J., "Model Rule 1.7-Conflicts of Interest and Elder Law," 14/1 NAEA Quarterly 16 (Winter 2001). Also see Crosby, Eleanor M. and Leff, Ira M., "Ethical Considerations in Medicaid Estate Planning: An Analysis of the ABA Model Rules of Professional Conduct," 62 Fordham Law Review (1994).

Message from Chair

Welcome to the fifth year of the OSB Elder Law Section! Thanks to the efforts of many, we've attained a number of goals.

2002 is the first full calendar year of the Section's Public Policy Subcommittee, led by Michael Levelle. We've identified specific policy goals and will work with our Legislation Subcommittee, Dady Blake and Ruth Simonis, co-chairs. The Section's Agency and Professional Relations Subcommittee, led by Donna Meyer, Cinda Conroyd, and Sam Friedenberg, has maintained a continuing dialogue with staff of Seniors and Persons with Disabilities (SPD).

The economic effects of September 11 and the highest state unemployment rate in the nation have produced an almost \$900 million revenue deficit in Oregon. Unfortunately, the few legislative victories for our clients in Oregon's 2001 session all seem to be back on the chopping block. Inevitably,

we will see changes ahead. Additionally, all estate planners can only wonder at the possible estate tax scenarios we'll see before 2011, when estates above \$675,000 are taxable.

On the larger horizon, federal Social Security and Medicare Trust Funds have been invaded since September 11, the oldest boomers are now nine years from age 65, and we're further from a middle-class long-term-care safety net than ever. Based on current rates of incidence, the Alzheimer's Association estimates that at some point in the next 30 years, the entire Medicare/Medicaid budgets will be consumed by boomer dementia alone. These challenges are daunting but inescapable.

Please join the efforts of our members by participating in any Section activity that touches your heart and imagination. Fellow boomers, *this is your life!*



By Tim Nay

Agency and Professional Relations Subcommittee update

By Sam Friedenberg

New DHS Programs

The Department of Human Services informed us of two new programs which may benefit our clients. Effective April 1, 2002, for women under 65, there will be a Breast and Cervical Cancer Program to cover all treatment related to breast and cervical cancer, including the cost of hospice. There are no resource or income requirements, but it is subject to estate recovery. To find out more, call Roger Staples at 503.945.6072.

Effective July 1, 2002, there will be a Senior Prescription Drug Program for individuals over age 65. It will allow qualified individuals to purchase medications at the Medicaid level (approximately 20% off list price). The income eligibility requirement is 185% of the poverty level and the resource limits are the same as for Medicaid. There is no estate recovery. To find out more, call Sandy Wood at 503.945.6530.

Jeff Miller also reminded us that the agency reimburses for adult day care. The rules are in chapter 411 of the OAR. To find out more call Delores Miller at 503.947.5162.

New Medicaid Rules

Those who receive the Notices of Proposed Rules Changes will have reviewed the many changes proposed both for eligibility and estate recovery. Our Section has many concerns about how the proposed rule changes will affect our clients. The Agency and Professional Relations Subcommittee filed comments to eight rules, and the committee hopes other members of the section have also filed comments. The agency will review the comments and issue final rules for April 1, 2002. Since we cannot now determine what the agency will decide, we will not discuss the specifics in this newsletter. However, practitioners should be alert to pending changes. This committee will

meet with the agency immediately after the publication of rules and will report back to Section members.

Medicaid Policy Changes

The subcommittee has been concerned about recent policy changes at DHS with regard to its implementation of Medicaid rules. Of course, there have always been and always will be changes, especially after a change in personnel. Accordingly, a meeting was held between various subcommittee members and agency administrators, including Nancy Talbot, James Toews, and Elizabeth Lopez. We presented our concerns about recent actions by Senior and Disabled Persons Services and advocated for the following:

- changes pursuant to rules and notice
- a rule-making process that includes the Elder Law Section of the Bar
- rules and policy based on legal standards
- consistency in policy over time
- rules and policy that are not always the most restrictive and no retroactivity in any new rules.

The administrators were receptive to our concerns and agreed to discuss these matters further. Let us hope there is a change.

Resources for elder law attorneys

Events

Crossing the Great Divide

2002 Joint Conference of National Council on the Aging & American Society on Aging
 April 4-7, 2002
 Denver, Colorado
 Phone: 800.537.9728
 Web site: www.agingconference.org

Elder Abuse: The Role of the Healthcare Professional

April 5-6, 2002
 Newport Beach Marriott Hotel
 Newport Beach, California
 Sponsored by University of California, Irving College of Medicine, Program in Geriatrics.
 Phone: 310.314.2536; fax 310.314.2589
 e-mail: elderconference@bscmanage.com
 Web site: www.elderseconference.org

2002 NAELA Symposium

April 17-21, 2002
 Hyatt Regency
 Baltimore, Maryland
 April 17 offerings are Basics Day, CELA certification review course, or a day on Capitol Hill. (Separate registration required for these sessions.) Tracks on technical and business practice, public benefits, and hot topics will be featured. Speakers include Tom Scully, Director of CMS (formerly HCFA); Howard Zaritsky, nationally renowned tax expert; and Senator James Reed. Contact Jenifer Mowery at 520.881.4005 ext 114, or jmowery@naela.org, or register online at www.naela.org.

Eighth International Conference on Alzheimer's Disease and Related Disorders

July 20-25, 2002
 Stockholm, Sweden

Hosted by the Alzheimer's Association
 Web site: www.alz.org/internationalconference/respite.htm
 E-mail: internationalconference@alz.org

OSB Elder Law Section CLE

Friday, October 11, 2002
 Oregon Convention Center
 Portland

International Conference on Family Caregiving

Oct 12-14, 2002
 Washington, DC
 National Alliance for Caregiving
 Phone: 800.537.9728
 Web site: www.caregiving.org
 Email: info@asaging.org

2002 NAELA Institute

November 14-17, 2002
 Hyatt Regency Albuquerque
 Albuquerque, NM
 Contact Jenifer Mowery at 520.881.4005 ext 114, or jmowery@naela.com

Elder Law Section Executive Committee Meetings

Lake Oswego OSB Center
 2:00 p.m.-5:00 p.m. on the following days:
 April 19, 2002 July 12, 2002
 Sept. 13, 2002 Nov. 8, 2002

Monthly Elder Law Discussion Groups

Elder Law I meets second Thursday
 Lloyd Center Tower, NE Portland
 Elder Law II meets first Thursday
 Legal Aid Services, Downtown Portland
 Details: Anne Stacey 503.224.4086

Training modules available

The National Legal Training Project offers substantive law training modules, which can be used both as training materials and as a stand-alone reference. They are in outline form with citations to statutes and regulations, and include advocacy tips, charts, model problems and answers, and resource sections.

Subjects are:

- Supplemental Security Income
- Social Security Disability
- Social Security Retirement
- Medicare
- Nursing Home Law
- Protective Services Series
- Elder Abuse

- Protective Arrangements
- Financial Planning
- Health Care Decision-Making
- Representing Older Persons with Diminished Capacity—Ethical Considerations
- Americans with Disabilities Act
- Food Stamps

The cost is \$10 per module, or \$50 for a full set. To order, send a written request to Legal Counsel for the Elderly, Inc.; PO Box 96474; Washington, DC 20090-6474. You will receive a bill with your shipment.

Web sites you can use

You may often find yourself searching for the elusive document or form.

After you have exhausted your own library and the libraries of your friends, your next stop should be the Internet.

One of my favorite research sites is VersusLaw, www.versuslaw.com. For \$8.95 per month per attorney, you have access to unlimited online research for state and federal cases. The service also offers a wide variety of legal forms for relatively low cost. There is an extensive collection of court-required probate forms for a number of states, which can significantly reduce your time in dealing with ancillary probate issues outside Oregon.

The best compilation of both state and federal court forms that I have found is on LLRX at www.llrx.com/courtrules. This LLRX site also offers a way to find the court dockets and rules online. Many of the LLRX links lead to US Court Forms at findforms.uscourtforms.com. This site requires a free registration, although it also offers subscriptions to its services. US Court Forms has general state forms as well as forms for Marion, Linn, and Lincoln counties in Adobe Acrobat format.

Another listing of court forms can be found on FindLaw at forms.lp.findlaw.com.

LexisOne has a large number of free forms and also offers forms for sale at its site www.lexisone.com. Both Lexis and WestLaw also have forms available to subscribers to these research services. AmJur Forms can be found on Westlaw.

Forms for Oregon appellate courts may be found on the Oregon Judicial Department's Web site at www.ojd.state.or.us/

Records/Records.nsf/pages/FORMS. That location also has links to the Oregon Rules of Appellate Procedure.

Many Oregon circuit courts also have local forms and rules on their Web sites. Links to the various circuit courts can be found via the Judicial Department's Web site at www.ojd.state.or.us/ojdinternet.nsf/circuit_court_web_sites.htm.

When you obtain forms from the Web, confirm that they are the current versions. Some Web sites are better than others at indicating the date the list was revised. Check the current law and check with the court where you plan to file the document to be sure that the forms have not been revised since they were posted. This is particularly true when you are relying on a third-party site rather than the site owned and maintained by the court itself.



By
Susan Ford Burns,
Portland

The purpose of the Oregon State Bar Elder Law Section's electronic mail distribution list is to facilitate communication among members. This is a private list. Participation is open only to Section members who have e-mail addresses registered with the Bar.

How to use the list:

To subscribe, send a message to listserv-er@lists.osbar.org with the following in the body of the message:
Subscribe eldlaw<yourname>

To send a message to all members of the list, e-mail it to eldlaw@lists.osbar.org. Replies are directed by default to the sender of the message *only*. To send a reply to the entire list, you must change the address to eldlaw@lists.osbar.org.

To receive your messages in digest form, (combined into a single message sent once each day): digest eldlaw<yourname>

Rules and guidelines

- Include a subject line in messages to the list. When replying to a message from the digest version of the list, edit the subject line to indicate the topic of the reply.
- Be polite. Do not post any defamatory, abusive, profane, threatening, offensive, or illegal materials.
- Sign your messages with your full name, firm name, and appropriate contact information.
- Do not send attachments. The list software will not accept messages with attachments and will return your message. Instead, copy and paste material from the attachment into your plain text message.
- Get permission from the original sender before forwarding a message from this list to someone who does not subscribe to this list.

Elder law Internet discussion list

Some changes to note

IRS form revised

The IRS revised its SS-4 form, effective December 2001. There is now a space on the form which authorizes a third party to receive the Employer Identification Number and answer questions about the application, thus doing away with the need to send a form 8821 with the SS-4 for that purpose.

Perhaps more important, there is a change in where we fax the SS-4 forms. Forms for Oregon and Washington now go to Philadelphia, Pennsylvania, instead of Ogden, Utah.

New fax TIN number: 215.516.3990; new tele-TIN number: 866.816.2065.

You can download the revised SS-4 form and the instructions (with the new numbers and address) from www.irs.gov.

Presorted Standard
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PAID
Portland, Oregon
Permit No. 341

DHS temporary rule changes

On February 26, 2002, the Oregon Department of Human Services issued two temporary rule changes. The first amends OAR 461-140-0220, which describes when a resource transfer will not disqualify an applicant or recipient from receiving Medicaid assistance or other public benefits. The second amends the definition of a court-ordered community spouse resource allowance in OAR 461-160-0581. The changes affect transfers and increases in community spouse resource allowances made pursuant to court orders. Members of the Section's Agency and Professional Relations Subcommittee are reviewing the temporary rules, which were not included in the agency's recent package of proposed rule changes.

The temporary rules are available online at afsmanuals.hr.state.or.us. They will expire on June 30, 2002.

Newsletter Board

The *Elder Law Newsletter* is published quarterly by the Oregon State Bar's Elder Law Section, Tim Nay, Chair. Statements of fact are the responsibility of the authors, and the opinions expressed do not imply endorsement by the Section.

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