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## The SECURE Act of 2019: takeaways for elder law attorneys

*By Leslie Kay, Attorney at Law*

**T**he Setting Every Community Up for Retirement Enhancement (SECURE) Act was signed into law on December 20, 2019. The new act became effective January 1, 2020. Key provisions modify Sections (H) and (E) of Section 401(a)(9) of the Internal Revenue Code of 1986. This article will focus on the provisions most relevant to elder law attorneys, though it includes other tax changes unrelated to retirement which will not be discussed here.

The SECURE Act increases the required minimum distribution (RMD) age for retirement accounts from 70 1/2 to 72.

This change applies only to people with tax-favored retirement accounts such as a traditional IRA, SEPs, and 401ks, 403 Bs, and the like who reach 70 1/2 after 2019. If an account holder turns 70 1/2 in 2020 or later, he or she won't need to start taking RMDs until April 1 after the year the age of 72 is attained.

If an account holder turned 70 1/2 during 2019 and has not yet taken an initial RMD for the 2019 tax year, the person must receive that RMD no later than April 1, 2020, or face a 50% penalty on the shortfall. That account holder must then take a second RMD—for the 2020 tax year—by December 31, 2020.

The new law retains the provision that if you are still working after the age of 70 1/2 and don't own more than 5% of the employer, you may postpone taking RMDs from your employer's plan(s) until after you've retired. The deadline for making a contribution for your 2019 tax year is April 15, 2020, but you cannot make a contribution for 2019 if you were age 70 1/2 or older as of December 31, 2019. You may make contributions for tax year 2020 and beyond under the new law.

The SECURE Act repeals the maximum age for traditional IRA contributions, which has been 70 1/2.

For tax years that begin after 2019, the SECURE Act repeals the age restriction on contributions to traditional IRAs. Formerly, you could not make contributions to a traditional IRA for the year during which you turned 70 1/2 or any further year. Now, under the act, one may make contributions for tax years beginning in 2020 and beyond.

There is no age restriction on Roth IRA contributions, and the SECURE Act does not change that.

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**SECURE Act** *Continued from page 1*

*Leslie Nori Kay was the regional director of the Portland office of Legal Aid Services of Oregon from 2002 to 2014. She administered the estate of climate-change photojournalist Gary Braasch between 2016 and 2018, and was the interim executive director of Youth, Rights & Justice in 2018 and 2019. She is now a semi-retired attorney and an active grandparent.*

The SECURE Act changes the rules regarding post-death mandatory withdrawals from inherited tax-advantaged retirement accounts for many beneficiaries.

The SECURE Act reduces the time period during which most non-spouse beneficiaries of a tax-advantaged retirement account must drain the account. Inherited retirement account distributions generally must now be taken within 10 years of the account holder's death.

Previously, a beneficiary of an inherited IRA could "stretch out" distributions and tax payments over a single life expectancy via trust planning. The beneficiary reaped the tax-advantaged benefits for many years.

Now, the length of the stretch will depend upon whether the beneficiary fits into any exceptions to the 10-year period. When applicable, the new 10-year distribution rule applies, regardless of whether the account owner dies before or after his or her RMD-required beginning date (RBD).

Only "eligible designated beneficiaries" as defined in the act continue to be eligible for a stretch strategy over a person's life or life expectancy. Eligible designated beneficiaries include: a surviving spouse, a minor child, a disabled or chronically ill beneficiary, and beneficiaries who are fewer than 10 years younger than the original IRA owner or 401(k) participant.

As summarized above, the SECURE Act contains a host of changes that may require revisions to estate plans. ■

## In the news

After almost 30 years of caring for those at the end of life, hospice center Hopewell House in Portland has closed. The federal government's Centers for Medicare and Medicaid Services recently made it harder to be admitted for inpatient hospice care. Another factor is that more patients are choosing to receive hospice care in their own homes. Consistent with national trends, Hopewell Hospice saw a decrease of 30% in inpatient hospice enrollment between 2012 and 2017. Across Oregon, the decrease was 15%. ■

Medicare has a new outpatient opioid treatment benefit, which pays for methadone and related treatment in certain facilities. Under a new rule that took effect in January 2020, Medicare will now provide payment to opioid treatment programs, also known as methadone clinics, as part of Medicare Part B. ■

As of July 1, 2019, Clackamas County probate court visitors are on a rotation and the court collects the fee on behalf of the visitor. Call the accounting unit at 503.655.8453, option 2, during public business hours to pay the court visitor fee.

The order to appoint the visitor will be drafted by the court after the visitor fee has been paid. Follow up with the probate department to notify the probate coordinator of payment.

The court visitor will receive the signed order appointing the visitor electronically. Please follow up with the visitor to provide any other necessary information. ■

The 2019 edition of the Oregon Revised Statutes is available online at [https://www.oregonlegislature.gov/bills\\_laws/Pages/ORS.aspx](https://www.oregonlegislature.gov/bills_laws/Pages/ORS.aspx). ■

# Probate and conservatorship accountings

By Heather O. Gilmore, Attorney at Law



Heather Gilmore was a charter member of the Executive Committee of the Elder Law Section of the Bar. Her practice includes nerdy and complex stuff related to trusts and estates. She intends to skid into the grave with chocolate in one hand and her surfboard in the other.

**B**ecause revocable trusts are used more frequently as will substitutes, properly conducting a probate proceeding can seem like a lost art. Here are some tips for preparing good probate and conservatorship accountings.

## Accounting periods

### Use the proper accounting period

Oregon Uniform Trial Court Rule (UTCRC) 9.160(1) requires an accounting to state the first and last date of the accounting period. For annual accountings, the last day of the accounting period shall be within 30 days of the anniversary of appointment.

### Defining the accounting period

State in the first paragraph of the accounting the period to be used. A best practice is to include the accounting period at the top of the asset schedule or in the header of each exhibit. The beginning balance of the accounting and each asset within the accounting is *always* the ending balance of the last accounting or the inventory value. Remember, an accounting is a *snapshot* of what the assets look like on two exact dates, the first date of which is always the date of death (or date of appointment for a conservatorship) or the last date (not the day after the last date) of the prior accounting. The accounting period in estates begins on the date of death, not the date of appointment or taking possession of the assets from a prior fiduciary like a conservator or agent under a power of attorney.

### Adjusting the accounting period

If you believe it is more cost-effective to use an accounting period that is the last day of the month, in the first accounting, ask the court to modify the accounting period (for example, a change from February 1 to January 31). Don't just start accounting in that manner. Get *prior* court approval via a motion and order to avoid difficulties.

Don't ask for an accounting period that exceeds one year. Account under the existing timeframe and later use an earlier date for the next accounting if you are requesting an adjustment to the accounting period. There is no authority for an accounting to exceed one year unless: you get prior court permission, it is timely, and it has a basis such as moving from a mid-month accounting date to a month-end date.

If you file the accounting late, the ending date of the accounting is not three months into the late accounting (which causes you to be able to file three months later next year). The accounting end date remains within 30 days of the anniversary of appointment.

### Consistency on end date of accounting

If monthly statements issued by different banks don't all end on the same date, it is tempting to use different end dates for the end of the accounting period for the different accounts. However, the accounting needs to consistently use the same end date. If the statement is issued on a date other than the last day of the accounting period, you must do the math. So, if the bank statement's starting and ending date straddles the end of the accounting period, this means adding any receipts made before the last day of the accounting period and subtracting any receipts made after the last day of the accounting period. The same is true of disbursements made before and after the accounting period. Make sure you have documents that support the values you are reporting.

### Estimating income

When preparing conservatorship accountings, add a description of the income to help you and your staff properly calculate this amount. Show the math right on your accounting.

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## Accountings *Continued from page 3*

For example:

Social Security @ \$892/mo x 12 = \$10,704

Pension @ \$650/mo x 12 = \$7,800

Bank interest based on prior year = \$50

Annuity Payments @ \$600/quarter =  
\$2,400

Estimate of brokerage account dividends  
based on total from prior year = \$2,100

*(This is easy to find on all brokerage account  
statements where they list dividends to date.  
You can prorate from the prior calendar year  
and add the current calendar year for the  
estimate.)*

Rent from property @ \$930/mo x 12 =  
\$11,160

Total Estimated Income: \$34,214

### Bonds

A bond is a requirement of the statute. There is a duty for attorneys to be forthright with the courts. Don't try and ignore the requirement that all assets need to be bonded. Either increase the bond or address the matter directly and get permission to reduce the amount of the bond or restrict the assets. Further, you must include the date of the order restricting assets. UTCR 9.160(1)(b)(iv). Don't make the court look through numerous approvals of accountings to find it. If you do, you are slowing down the process for other attorneys and the court.

If you want to reduce a bond, remember to do three things. First, provide a valid reason for the reduction. If it is just a limited amount over, such as \$5,000 or less, then explain that to the court. If the cost of adjusting the bond will exhaust the amount in excess of the current bond, include that information. Second, provide the court with information that demonstrates the assets objectively will be protected without the bond. Third and finally, tell the court the difference between the amount that should be bonded, the amount of the current bond, and the amount you want the bond to be.

Do the math for the court in a way the court can see it. If you detail it with a written narrative, also show the math for clarity. For example:

Total assets & estimated income	\$180,000
Current bond	\$150,000
Difference	\$30,000

In this case, assume the fiduciary requests that the bond remain the same because the amount in excess of the current bond will be reduced as follows:

Attorney fees requested in this accounting	\$5,000
Conservator fees requested in this accounting	\$1,000
Care bill due (month of the accounting)	\$7,000
Care bill due (month following the accounting)	\$7,000
Total:	\$20,000

This represents a difference of only \$10,000 between the total assets and estimated income and the amount of the bond. If the estimated income will be earned over the upcoming accounting period, due to the cost of care over that same accounting period, the amount managed by the fiduciary at any one time will not exceed the amount of the bond.

### Listing assets in the accounting

Begin your draft of the accounting with the asset schedule from the inventory or the prior accounting and address each asset that existed on the inventory or the prior accounting in the same order in which it appears on the inventory or prior accounting. Remember to include the request for waiver of the vouchers in the prayer of the motion to approve accounting and in the order or judgment approving the accounting.

When there are changes in assets during the accounting period (and there always are), provide a narrative on items such as the following:

- sales or other dispositions of assets
- change in the name of the financial institution (include this information on the asset schedule and exhibits as well)
- closing and opening accounts (explain the reason)
- change in needs of protected person that affect receipts or disbursements
- changes in Social Security or pensions, or increases in health insurance bills
- anything else that affects how the numbers and the assets might be perceived

It's better to overdisclose than underdisclose (especially in light of the holding in the *Fuentes* case discussed below).

With conservatorships, it is helpful if you include in the narrative a brief background. For example, the reason the protected person is financially incapable, his or her age, the relationship of the conservator to the protected person, where he or she lives, prior budget approvals, annuity payment terms, the protected person's activities that are reflected in the disbursements (such as horseback riding, lunch with a friend/paid companion, extra caregivers, challenging behaviors), and so on.

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## Accountings

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### Adequate disclosures

In general, report anything “squishy.” That is, any interaction that involves benefits or payments to a fiduciary or the fiduciary’s attorney. UTCR 9.170 requires disclosure of certain transactions. The disclosures required cover a broad range of transactions and reflect the UTCR committee’s concern regarding many different kinds of actions by fiduciaries. It requires disclosures of any transactions “with a person or entity with whom the fiduciary has a relationship which could compromise or otherwise affect decisions made by the fiduciary.” UTCR 9.170(2). This provision specifically includes, but is not limited to, payment for goods, services, rent, reimbursement of expenses, or any other like transactions. *Id.* The rule requires disclosure of any payment for goods or services provided to either a person who is not engaged in an established business providing such goods or services to the public, or where such payment is at a rate higher than that ordinarily charged to the general public. UTCR 9.170(3).

“Out” these transactions in your accounting. Have your client own it and deal with it at the time. It is better to disclose and address the matter in the year the transaction occurred as opposed to failing to disclose the issue and the court finding out later—which can be grounds for removal.

Be sure you know which transactions require prior approval. If, during the preparation of the account, you find that one of these has inadvertently occurred, file a motion asking for approval with the accounting and provide an explanation of why the transaction occurred without prior approval. Common examples where this might arise include: payments to the fiduciary or the attorney for the fiduciary (ORS 125.095(3)); gifts of more than \$250 in a calendar year to one individual or exceeding an aggregate total of \$1,000 in a calendar year (ORS 125.435); sale of

the protected person’s residence (ORS 125.430); payment of room and board to a conservator who is also the guardian (ORS 125.320(2)); conveyance or release of joint tenancy for assets like bank accounts (ORS 125.440(1)); creation of trusts (ORS 125.440(2)); and other limitations listed in ORS 125.440.

The court does not have total recall of all files. If the court previously approved a transaction (e.g., gift over the statutory amounts, payment of fiduciary or attorney fees, sale of the protected person’s residence, creation of a trust, etc.), it is extremely helpful if the listing of the transaction includes a reference to the date of the order approving the transaction. This saves time searching through the file.

Don’t forget to report changes in business practices for a professional fiduciary, and to update professional fiduciary disclosures if there are any changes from the disclosures made at the time of appointment.

“Bounced checks” are another problem area. The fiduciary is charged with properly managing the protected person’s finances. Absent some unusual situation like fraud or the protected person continuing to access accounts without the fiduciary’s knowledge, there should not be bank fees for bounced checks, late payment fees, etc. The fiduciary will be expected to explain such charges and will generally be required to reimburse the protected person for them unless due to circumstances beyond the fiduciary’s control.

The finality of accountings, and of objections to them, are addressed in *Fuentes v. Tillett*, 263 Or App 9 (2014). In *Fuentes*, the Court of Appeals found that where objections relate to matters not disclosed in the accountings, the orders approving the accountings cannot cut off the protected person’s rights to complain about those undisclosed matters. Intermediate accounting orders are final only as to the conservator’s liability regarding the matters that were actually presented to, and considered by, the probate court when it approved the interim accountings.

Counsel representing a fiduciary should be sure that each interim accounting is full and complete, especially for things that could look problematic. Without full disclosure, the accounting and the order approving it will not actually cut off the fiduciary’s liability for misdeeds not disclosed in the accounting. The Court of Appeals did not give any direct guidance in *Fuentes* as to how specific and clear such disclosure must be, but obviously, the clearer and more specific the disclosure the more likely it is that the order will have the preclusive effect that we all would expect it to have.

Finally, in light of *Fuentes*, the best practice may be to keep all records until after the close of the proceeding, including retention of vouchers.

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## Accountings *Continued from page 5*

### Elder abuse

ORS 124 contains the civil action for elder abuse. ORS 124.100(5) provides that an action may be brought “*against a person for permitting another person to engage in physical or financial abuse if the person knowingly acts or fails to act under circumstances in which a reasonable person should have known of the physical or financial abuse.*” (Emphasis added.)

ORS 124.110(1) sets out circumstances of abuse:

(a) When a person wrongfully takes or appropriates money or property of a vulnerable person, without regard to whether the person taking or appropriating the money or property has a fiduciary relationship with the vulnerable person.

(b) When a vulnerable person requests that another person transfer to the vulnerable person any money or property that the other person holds or controls and that belongs to or is held in express trust, constructive trust or resulting trust for the vulnerable person, and the other person, without good cause, either continues to hold the money or property or fails to take reasonable steps to make the money or property readily available to the vulnerable person when:

(A) The ownership or control of the money or property was acquired in whole or in part by the other person or someone acting in concert with the other person from the vulnerable person; and

(B) The other person acts in bad faith, or knew or should have known of the right of the vulnerable person to have the money or property transferred as requested or otherwise made available to the vulnerable person. [Emphasis added.]

Remember that judges are mandatory elder abuse reporters and also mandatory reporters (like all attorneys) to the Oregon State Bar for ethics violations.

Avoid being a bystander who gets run over by the bus in an elder abuse action against the fiduciary.

Withdraw if necessary. You have Professional Liability Fund insurance (hopefully in an amount that would cover your client’s taking) and you are a deep pocket. Your flake of a fiduciary may not even have a bond. Even if the flaky fiduciary has a bond, it is unlikely that the bond is in an amount equal to three times the economic damages plus reasonable attorney fees and reasonable fees for the services of a successor guardian or conservator. The treble damages and attorney fees are the award for a successful civil action for elder abuse.

### Fees

If the proceeding is a conservatorship and the attorney fees are paid from any source in which the protected person has an interest or where the fiduciary later desires to be reimbursed, the attorney fees must be approved by the court. In particular, a protected person’s beneficial interest in a trust is an asset the court may consider to be “funds of a person subjected to a protective proceeding” under ORS 125.095(1). This is based on *Helmig v. Farley, Piazza & Associates*, 218 Or App 622, 627 (2008), where the court found a property interest sufficient to justify a conservatorship because “[t]here is clear and convincing evidence that Lea’s beneficiary interest in the trust was not being properly managed.”

Taking fees without prior court approval is an ethical violation. In *In re Altstatt*, 321 Or 324, 333 (1995), the Oregon Supreme Court stated:

Since *Coe*, this court has held that estate lawyers who take attorney fees from an estate without obtaining prior court approval engage in unethical conduct. See *In re Devers*, 317 Or. 261, 266, 855 P.2d 617 (1993) (lawyer licensed to practice law in both Oregon and Michigan who, while representing a personal representative in Michigan, collected a \$2,775 fee from the heirs but did not disclose the fee to the probate court, violated DR 2 106(A)); *In re Phelps*, 306 Or. 508, 517, 760 P.2d 1331 (1988) (lawyer disbarred for, *inter alia*, retaining attorney fees “although he had not obtained authorization from the court as required by ORS 116.183(1)”); *In re Weidner*, 320 Or. 336, 338 39, 341, 883 P.2d 1293 (1994) (lawyer violated DR 2 106(A) when he collected attorney fees from an estate without applying to the probate court or obtaining an order from that court, as required by ORS 116.183). The rule to be derived from those cases is that it is impermissible to collect attorney fees from an estate in probate without prior court approval. Any such attorney fee that is collected without approval is unlawful and, hence, an “illegal” fee. Therefore, *the accused’s receipt of the attorney fees without court approval in this case was the collection of an illegal fee and was unethical conduct under DR 2 106(A).* [Emphasis added; footnotes omitted.]

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## Accountings *Continued from page 6*

**Do not assume what the court should know from the file or prior accountings.**

*Altstatt* is an estate case, but the rule is the same for protective proceedings and there have been subsequent disciplinary proceedings applying the concept in conservatorships.

### General accounting rules and best practices

The following is a list of important rules and tips that should be rules for all accountings. As an initial matter, do not assume what the court should know from the file or prior accountings. On the description of disbursements, state the name of the payee and the purpose. If you just put *Walgreens*, for example, it is not clear whether it was a prescription, personal hygiene products, or wine for the conservator. Use as much detail as possible. If you pay a doctor, use the term *medical expense* in the Purpose column.

### Notices

Make it easy for your staff and the court by creating a document that is a table with the interested persons' names and addresses. Then, block copy the names and addresses of interested persons and insert in any pleadings that require information on interested persons, insert in the notice itself, and insert in the proof of service. This will help your staff keep it consistent and help the court to efficiently review the accounting.

### The asset schedule

Under the column for Description of Asset, include institution name, account number, type of account, address for property, and tax account number. In a conservatorship, insert the date the real property abstract was recorded and filed with the court, and for new assets include the date of acquisition or disposition if it occurred during the accounting period.

### Real property abstract

File a copy of the recorded abstract with the court contemporaneously with the inventory or as soon thereafter as reasonably possible. On the asset schedule and the exhibit, reference the date of recording and filing of the abstract; and in the first accounting, if the abstract has not been separately filed or attached to the inventory, attach a copy to the real

property exhibit. See ORS 125.470(3) for the requirement of filing an abstract for any protective proceeding that includes real property. The form of the abstract is also statutory.

### Disposition and acquisition of assets

If an asset is transferred, disposed of, or abandoned or exhausted during the accounting period, or if the form changes (for example, cash to a CD), include this detail in the description on the asset schedule. It saves court staff from flipping back and forth between the narrative and the asset schedule and trying to put together sometimes poorly written narrative with numbers and exhibits.

For new financial accounts opened during the accounting period, the value of the later acquired asset column is zero. The account starts out with zero dollar value. An example of this is closing accounts in the protected person/decendent's own name and moving the accounts to the new checking account for the fiduciary. These new accounts have a later acquired value of zero. Then, as part of the reconciliation of the new account, all receipts and disbursements are shown.

### Restrictions

UTCR 9.160(2)(a)(i) requires that the description of any asset that has been restricted pursuant to court order must include the date and title of the order. Best practice is to also include the date the formal Affidavit and Acknowledgment of Restriction was filed with the court. This serves as a way to double check you have done everything you need to do and simplifies review by the court, allowing accountings to be processed more efficiently.

### Itemize

Itemize receipts and disbursements separately, as required by UTCR 9.160. Also, provide the total of each list of receipts and disbursements at the end of each list. If you fail to do this, don't be surprised if your accounting gets returned to you for failure to comply with the UTCR.

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## Accountings *Continued from page 7*

*This article was originally published in the July 2019 issue of the Estate Planning and Administration Section newsletter.*

*It contains highlights from a CLE presentation made at the Marion County Courthouse, Salem, Oregon, on February 6 and 13, 2019.*

*The original presentation is available online at <https://www.courts.oregon.gov/courts/marion/programs-services/Documents/AnnualAccountings.pdf>*

For investment accounts, it is sufficient to show for each month “gain in investment value” or “loss in investment value.” The court may request all the brokerage statements for any given accounting period.

UTCR 9.160(3)(a) requires the receipts and disbursements to be in chronological order, not organized by check number or some other method.

Be sure to avoid a significantly common error by listing all transactions that occurred during the accounting period, and not listing transactions outside of the accounting period. In other words, if the accounting period ends on May 1, a check written on April 30 should be listed, but a check written May 2 should not be listed, even if it is shown on the bank statement that confirms the ending balance on May 1.

### Final review items

The attorney must review the accounting. In 2003, an attorney was suspended for 60 days for failing to review accountings before filing them. See *In re Roberts*, 335 Or 476 (2003). The opinion does not recite the facts, but those can be found in the Bar Bulletin archives here: <https://www.osbar.org/publications/bulletin/03augsep/discipline.html>.

The following are some common items worth reviewing.

Total all the columns on the asset schedule as required by UTCR 9.160(2)(b).

Review the accounting exhibits specifically for prohibited disbursements, which include:

- any payments to a guardian, conservator, or attorney without prior court approval (although cost reimbursement is OK with proper documentation and if reasonable)
- any payment of room or board to a guardian without prior court approval; and
- gifts greater than \$250 to one person or totaling more than \$1,000 combined among all donees for one accounting year

Review the accounting exhibits specifically for transactions with an actual or potential conflict of interest. Conflicts of interest include: 1) loans to or from the conservator; 2) sales or purchases of assets with or to the conservator, a family member, or close friend of the conservator or an employee of the conservator; and 3) payments to relatives of the conservator for services provided to the protected person.

Review the math on the reconciliation and compare the beginning balance and the ending balance to the financial institution statement for each asset. If it is well organized by staff, this should be a quick process. If it is not a quick process for the reviewing attorney, then it is not a quick process for the court staff and you are creating delays for both the court and other attorneys.

Verify that the closing statement on the old/disposed of asset matches the amount transferred to the other account. If you can't find it quickly, then it's also a problem for the court. ■





## Annual report from the Elder Law Section 2019 Chair



Max (l) and Darin Dooley, Past Chair of the Elder Law Section Executive Committee

The Elder Law Section Executive Committee meets six times a year and is comprised of five officers and eleven members at large. Most Elder Law Section activities take place through the work of the four subcommittees: Continuing Legal Education (CLE), Newsletter, Legislative, and Scholarship. The Executive Committee is considering the addition of a subcommittee to specifically cover Social Security and Medicaid issues and coordinate advocacy with national organizations. This should be finalized in early 2020.

### CLE Subcommittee

The CLE subcommittee, chaired by Kay Hyde-Patton, has traditionally sponsored, in conjunction with OSB, an annual CLE in Portland during the fall, with replay opportunities around the state. This year the section invited a national speaker, David Lillesand, to present.

The Section also holds an “unCLE” in May in Eugene. The format of the unCLE is an informal day-long session where participants meet with their peers to “talk shop” both in workshop settings and over breakfast, lunch, and a social hour. The number of attendees is limited to 80, and there are four facilitated sessions. Participants can choose one of the four topics offered. The topics usually include estate planning, protective proceedings, Medicaid, and Practice Management. Attendees bring printed materials to share and actively participate in

session discussions by raising questions and providing answers based on personal and practice experience.

### Newsletter Subcommittee

The quarterly *Elder Law Newsletter*, professionally edited by Carole Barkley, is a major benefit provided by the Section to its members. The Subcommittee is chaired by Monica Pacheco. Its members and the editor determine each issue’s focus and recruit writers for specific topics. The newsletter is distributed electronically, which saves money and environmental resources. Issues from past years are available on the Section’s website.

### Scholarship Subcommittee

This subcommittee was created in 2017. The Section provided scholarships to two participants for the fall CLE in October 2019 and two participants for the 2019 unCLE.

### Legislative Subcommittee

During 2019, the subcommittee worked with the Section, the Bar, and other stakeholders to monitor and participate in legislative proposals that affect people who are elderly, incapacitated, and/or financially incompetent. The Legislative Subcommittee is chaired by Christopher Hamilton.

During the 2019 legislative session, the Elder Law Section put forward **HB 2460: Senior property tax deferral program**. It fixes the situation wherein a property involved in the senior tax deferral program is underwater at the death of the owner. Prior to passage of this law, the statute seemed to suggest an heir was jointly and severally liable for the deferred property tax debt, even if that heir took no beneficial interest in the property or any other property of the estate. The Oregon Department of Revenue issued several tax demands to heirs under these circumstances. The bill ensures that an heir is only jointly and severally liable if he or she occupies, leases, or uses the property for more than ninety days after the death of the deferral-program participant, receives the property from the estate, or receives the property by gift or assignment from an insolvent owner. Effective date was September 29, 2019.

The subcommittee monitored but did not act on several other pieces of legislation, will similarly track bills during the 2020 session, and welcomes comment on bills being tracked and suggestions for bills that should be tracked or have action taken on them.

### Other activities

A representative of the Executive Committee attended orientation events for both Willamette University College of Law and Lewis & Clark Law School to provide information about the Elder Law Section.

The Section made contributions to the Campaign for Equal Justice, Guardian Partners, Disability Rights Oregon, and Oregon Minority Lawyers Association. ■

## Elder Law 2019: Delving Deeper into the Current Issues

By Kay Hyde-Patton, Chair of CLE Subcommittee

**O**ur Fall CLE in October was a home run! An unprecedented success!

This was our section's first time to have a nationally acclaimed speaker join us. David Lillesand of Lillesand & Associates PA in Clearwater, Florida presented on two topics: the basics of Supplemental Security income for elders and persons with disabilities, and Social Security Administration approval of attorney fees. He also joined a panel for a third session.

Our Oregon attorneys were their exceptional selves, providing clarity on current issues. They included Monica Pacheco, Christopher Hamilton, Tim McNeil, Melanie Marmion, Alana Hawkins, and Rebecca Kueny.

We had 106 attend in person, and 56 on webcast for a total of 162 attendees.

We look forward to another great year, with the unCLE on May 1, a seminar on financial abuse of elders on July 10, and our fall CLE on guardianships and conservatorships in October. ■



*Christopher Hamilton and Tim McNeil provided an update on recent developments in Oregon elder law.*



*Alana Hawkins and Rebecca Kueny shared information on resources for elder law clients.*



*Kay Hyde-Patton introduced Monica Pacheco, who spoke about Social Security rules for maximizing the Oregon ABLÉ savings plan.*



*Allison Bren Ferris, David Lillesand, and Melanie Marmion held a panel discussion on the topic of new SSI rules for the administration of special needs trusts.*

## MCLE reporting process

Last fall the Oregon State Bar updated the MCLE reporting process. If you attended or watched the CLEs at the Capitol, or participated in any other CLE for credit, the reporting process is below.

To add a CLE program to your MCLE transcript follow these steps:

1. Log on to your **Member Dashboard** at [hello.osbar.org](http://hello.osbar.org)
2. Go to the **MCLE Reporting**
3. Click **Add Activity to Transcript**
4. Click **Accredited Group Course**
5. **Program Database Search Options**  
(Select one of the following)

### Event ID

- i. Type in program ID # (replaces program number in old system)
- ii. Program automatically pops up in Search Results
- iii. Go to #6 below

### Event Sponsor

- i. Type in sponsor name (spelled out/ no acronyms)
- ii. Date range of program (optional)
- iii. Event Type (optional)
- iv. Credit type (optional)
- v. Go to #6 below

### Event Title

- i. Type in program number, if available; title will auto populate—click on title to fill field
- ii. Leave all other fields blank
- iii. Go to #6 below

### Date and City (for live events)

- i. Type in date of the event
- ii. Type in city of the event
- iii. Go to #6 below

6. Scroll down and click on Search Events
7. Double click on the course (LIVE version or RECORDED version)
8. Answer the question about whether you completed all or part of the program.
9. Add the program to your transcript.

If any questions arise, contact the MCLE Department at the Oregon State Bar at [mcle@osbar.org](mailto:mcle@osbar.org). ■

## Annual business meeting



*Darin Dooley, 2019 Executive Committee Chair, convened the annual business meeting of the Elder Law Section.*

The annual meeting of the Elder Law Section was held on Friday, October 4 at the Multnomah Athletic Club in Portland.

During the annual meeting the following Section members were elected to the 2020 Executive Committee:

### Officers

*Terms ending December 31, 2020*

Chair: Theressa Hollis

Chair-elect: Julie Meyer Rowett

Past Chair: Darin J. Dooley

Secretary: Anastasia Yu Meisner

Treasurer: Andrea N. Ogston

### Members at Large

*Terms ending December 31, 2021*

Kathryn Gapinski

Christian Hale

Alana Hawkins

Rebecca Kueny

Matthew C. McKean

Jennifer H. Kwon

*Term ending December 31, 2020*

Kay Hyde-Patton

Members previously elected to the executive committee and continuing through December 31, 2020, include:

Monica D. Pacheco

Julie C. Nimnicht

Christopher D. Hamilton

Corey P. Driscoll ■

## Save the date

The Elder Law Section and OSB will cosponsor a seminar on Elder Financial Abuse Litigation. It is scheduled for July 10, 2020, from 9:00 a.m. to noon at the OSB offices.

The program will feature a review of the basics of elder financial abuse claims, case evaluation, important statutory and case-law updates, and an all-new segment on defending abuse claims.

Brooks Cooper, Jan Kitchel, and Brook Wood will be the presenters.

This is sure to be a don't-miss event.



# Resources for elder law attorneys

## Events

### Resilient Lawyer: Managing Stress and Anxiety in the Practice of Law

Oregon Bar Association CLE Seminar  
February 19, 2020/12:00–1:00 p.m.  
Oregon State Bar Center, Tigard  
<https://ebiz.osbar.org/ebusiness/Meetings/Meeting.aspx?ID=2957>

### Family Feuds in Trusts: How to Anticipate & Avoid

Webinar  
February 21, 2020/10:00 a.m. PT  
<https://or.webcredenza.com/program?id=119139>

### Estate Planning Spring Series

Multnomah Bar Association seminars  
Beginning April 9, 2020  
Standard Insurance Center, Portland  
<https://mbabar.org/education/estate-planning-spring-series-2020/>

### Elder Law Section unCLE

May 1, 2020  
Eugene

### Elder Financial Abuse Litigation

Elder Law Section Seminar  
July 10, 2020  
Oregon State Bar Center, Tigard

## Websites

### Elder Law Section website

<https://elderlaw.osbar.org>  
Links to information about federal government programs and past issues of the Section's quarterly newsletters

### National Academy of Elder Law Attorneys (NAELA)

[www.naela.org](http://www.naela.org)  
Professional association of attorneys dedicated to improving the quality of legal services provided to elders and people with special needs

### National Center on Law and Elder Rights

<https://ncler.acl.gov>  
Trainings and technical assistance on a broad range of legal issues that affect older adults

### OregonLawHelp.org

[www.oregonlawhelp.org](http://www.oregonlawhelp.org)  
Helpful information for low-income Oregonians and their lawyers

### Ageing and Disability Resource Connection of Oregon

[www.ADRCoofOregon.org](http://www.ADRCoofOregon.org)  
Includes downloadable *Family Caregiver Handbook*, available in English and Spanish versions

### Administration for Community Living

<https://www.acl.gov>  
Information about resources that connect older persons, caregivers, and professionals to federal, national, and local programs

### Big Charts

<http://bigcharts.marketwatch.com>  
Provides the price of a stock on a specific date

### American Bar Association Senior Lawyers Division

For elder law attorneys age 62+  
[https://www.americanbar.org/groups/senior\\_lawyers/](https://www.americanbar.org/groups/senior_lawyers/)

### National Elder Law Foundation

<http://www.nelf.org>  
Certifying program for elder law and special-needs attorneys

### National Center on Elder Abuse

<https://ncea.acl.gov>  
Guidance for programs that serve older adults; practical tools and technical assistance to detect, intervene, and prevent abuse

### Elder Law Marketing 101

<https://blog.eldercounsel.com/elder-law-practice-marketing-101>  
Blog from eldercounsel.com that suggests ways to attract and retain elder law clients

### Multnomah County Senior Law Project

<https://oregonlawhelp.org/organization/senior-law-project>  
Free half-hour legal consultations with attorneys at Multnomah County Senior Centers ■

## Publications

### Advance Directive: Your Life. Your Decisions – with the KEYConversations™ Planning Guide

<https://www.oregonhealthdecisions.org/product/advance-directive-your-life-your-decisions-with-the-keyconversations-planning-guide-english-version/>

### Guide to Transportation for Seniors

A helpful, visual guide to getting older and getting around  
<https://www.seniorliving.org/research/transportation-guide/>

### Guardianship and the Right to Visitation, Communication, and Interaction

Legislative fact sheet from the American Bar Association Commission on Law and Aging  
[https://www.americanbar.org/content/dam/aba/administrative/law\\_aging/2018-05-24-visitation-legislative-factsheet.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/law_aging/2018-05-24-visitation-legislative-factsheet.authcheckdam.pdf)

### 2019 Oregon Revised Statutes

[https://www.oregonlegislature.gov/bills\\_laws/Pages/ORS.aspx](https://www.oregonlegislature.gov/bills_laws/Pages/ORS.aspx) ■

**Important  
elder law  
numbers**

as of  
January 1, 2020

Supplemental Security Income (SSI) Benefit Standards	Eligible individual ..... \$783/month Eligible couple.....\$1,175/month
Medicaid (Oregon)	Asset limit for Medicaid recipient.....\$2,000 Long term care income cap.....\$2,349/month Community spouse minimum resource standard ..... \$25,728 Community spouse maximum resource standard ..... \$128,640 Community spouse minimum and maximum monthly allowance standards.....\$2,113.75/month; \$3,216/month Excess shelter allowance .....Amount above \$634.13/month SNAP (food stamp) utility allowance used to figure excess shelter allowance .....\$444/month Personal needs allowance in nursing home ..... \$64.11/month Personal needs allowance in community-based care.....\$175/month Room & board rate for community-based care facilities..... \$608/month OSIP maintenance standard for person receiving in-home services.....\$1,283 Average private pay rate for calculating ineligibility for applications made on or after October 1, 2018.....\$8,784/month
Medicare	Part B premium ..... \$144.60/month* Part D premium .....Varies according to plan chosen Part B deductible ..... \$198/year Part A hospital deductible per spell of illness.....\$1,408 Skilled nursing facility co-insurance for days 21-100 ..... \$176/day  * Premiums are higher if annual income is more than \$85,000 (single filer) or \$170,000 (married couple filing jointly).



**Elder Law  
Section**

**Newsletter Committee**

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