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Estate planning for a protected person

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Clients create estate plans for a variety of reasons: to dispose of the assets of their estate in accordance with their wishes, to grant decision-making authority regarding themselves and their property to persons they trust and respect, to help their survivors by minimizing the inconvenience and other burdens associated with caring for them or their estates, or to identify candidates for the court to consider in appointing a guardian for minor children. These reasons apply to protected persons as well as to anyone else.

This article addresses estate planning for a protected person. It does not address estate planning for a person who is not a protected person, but probably should be. In developing this article we have interviewed persons who have prepared estate plans for protected persons or have litigated issues arising from estate plans prepared for protected persons. Based upon these discussions, bear in mind that preparing an estate plan for a protected person is unusual. None of the persons we spoke with has done it more than twice. It is hoped that this is because most protected persons either already has an estate plan before they became a protected person, or because the needs of most protected persons are sufficiently addressed through the guardianship or conservatorship or applicable Oregon law.

With regard to estate planning attorneys and estate planning for protected persons, an unscientific analysis would divide them into three groups:

- those who would never under any circumstances prepare an estate plan for a protected person
- those who believe that preparing an estate plan for a protected person is the same as any other estate planning with some additional care required at the signing, and
- those who have never confronted the issue, so they have never really thought about it

Estate planning for a protected person is different. Additional care is required at all steps of the process. Also, it is best to think through the issues related to estate planning for a protected person and to develop a plan of action before a protected person shows up in your office accompanied by persons who may have very definite ideas on what can be done and what you should do.

The estate plan

The tools typically used in crafting an estate plan are:

- Documents or financial instruments where the assets or benefits can be conveyed to a survivor by operation of law. These would include the beneficiary designation on a life insurance policy, a 401(k) plan, or an

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IRA, a payable-on-death provision for a checking or savings accounts, or a jointly held asset with a right of survivorship

- A will which when properly prepared and executed can, among other things, provide for a distribution of estate assets to designated devisees, the nomination of someone to serve as the guardian for minor children, the creation of a testamentary trust for minor children or disabled beneficiaries, or a disclaimer trust or other estate tax planning provisions
- A revocable living trust which—when properly prepared, executed, and funded—can among other things provide for a distribution of trust assets to designated devisees, provide for the care of the settlor in the event he or she is legally incapacitated, or create a disclaimer trust, or include other estate-tax planning provisions
- An appointment of a person for the disposition of remains. This authorizes a designated person to make certain burial decisions upon the death of the person making the appointment.
- An advance directive that provides for the appointment of a health care representative and permits the person creating the advance directive to give instructions to the health care representative as to whether or not healthcare should be continued under certain circumstances
- A durable power of attorney that creates an agent to manage the assets of the person who created the durable power of attorney and whose authority survives the legal incapacity of the person creating the durable power of attorney or springs into effect at that time

An estate plan is the incorporation of these tools as may be appropriate to meet the needs and desires of the client. The point here is that creating an estate plan involves more than creating a legally viable will.

Protected persons

For our purposes, a protected person is a person for whom either a guardianship or a conservatorship has been established by judgment of a court. The requirements for appointing a guardian or a conservator are not the same.

Guardianship

A guardian is much like a legal parent. When the protected person is an adult, this results in a substantial change in legal status. When a guardianship is established, it "deprives a person of precious individual rights, and Oregon's statutory process is designed to protect those rights with 'extensive procedural requirements and substantive requirements,'" *Shaefer v. Shaefer*, 183 Or App 513, 516, 52 P3d 1125 (2002); *Van v. Van*, 14 Or App 575, 580-581, 513 P2d 1205 (1073); *Guardianships, Conservatorships, and Transfers to Minors* (Oregon State Bar CLE GCT-OSB, Section 3.2.)

A guardian for an adult may be appointed only when it is determined by clear and convincing evidence that a guardianship is "necessary to promote and protect the well-being of the protected person." ORS 125.300(1).

A guardianship can only be ordered "to the extent necessitated by the person's actual mental and physical limitations." ORS 125.300(1); GCT-OSB, Section 3.2. In order for a guardian to be appointed the protected person must be incapacitated. A person is incapacitated if a "person's ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that the person presently lacks the capacity to meet the essential requirements for the person's physical health or safety." ORS 125.005(5). Meeting the essential requirements for physical health and safety means "those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury or illness is likely to occur." ORS 125.005(5); GCT-OSB, Section 2.5.

Conservatorship

A conservator has authority over a more limited range of activities than a

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guardian has. Even so, a conservator is vested with the broad authority to handle the financial and business affairs of a protected person, the authority for which centers on the personal welfare of the protected person. GCT-OSB, section 4.2.

In order to appoint a conservator, the court must find by clear and convincing evidence that the protected person is financially incapable and has money or property that requires management or protection. ORS 125.400; GCT-OSB, section 4.3.

A person is financially incapable if "unable to manage financial resources of the person effectively for reasons including, but not limited to, mental illness, mental deficiency, physical illness or disability, chronic use of drugs or controlled substances, chronic intoxication, confinement, detention by a foreign power, or disappearance." The phrase "manage financial resources" means "those actions necessary to obtain, administer and dispose of real and personal property, intangible property, business property, benefits and income." ORS 125.005(3); GCT-OSB, section 2.5.

Diminished capacity rules of ethics

An attorney who represents a protected person is subject to the ethical rules that apply to persons with diminished capacity.

The key feature of these ethical rules is the burden placed upon the attorney to try and determine what is or is not appropriate.

Oregon Rule of Professional Conduct (ORPC) 1.14 (a) states that "[w]hen a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client." How exactly to do this may not be easy or obvious. The inescapable fact is that a protected person is impaired in some significant way. The representation of a protected person is not routine and cannot and should not be treated as routine. The diminished capacity must be addressed or accommodated in some way.

ORPC 1.14 (b) states that when the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial, or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator, or guardian. With a client of diminished capacity, the attorney is responsible for deciding whether or not to take action to protect the client. There may be ethical consequences if the decision not to protect the protected person results in financial elder abuse under ORS 124.110.

ORPC 1.14(c) states that information related to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is by implication authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests. Again, in a case involving a client with diminished capacity, the burden is on the attorney to determine what information should or should not be shared with others.

For an example of relevant ethical considerations addressed in an estate planning situation, See, *In re Zanotelli*, 23 DB Rptr 124 (2009).

Getting started

As part of the initial intake process, an attorney asked to do estate planning for a protected person should consider the following questions:

Who is asking you to do the estate planning? Who is approaching you? The protected person? The guardian? The conservator? A caregiver? A domestic partner? A child? If approached by someone other than the protected person, an estate planning attorney should promptly and clearly state that if he or she is retained, the client would be the protected person, and as the client would be the one telling the attorney what to do. The attorney should also make it clear that before any decision about representation can be made he or she must meet and talk with the protected person alone.

If the person contacting the estate planning attorney has a problem with this, the attorney will probably never hear from that individual again. This is not a problem. The lost aggravation will more than make up for the lost income.

What are you being asked to do? Are you being asked to create an estate plan where one does not exist or amend an existing estate plan? Are you being asked to do something that makes sense and is useful to the protected person? Are you being asked to do something that is a radical change from the existing estate plan and does not appear to benefit the protected person at all? How likely is it—based, for example, on possible issues of incapacity or undue influence—that doing what is requested will commit you to participation in litigation

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or other dispute resolution activities long after the estate plan is completed? Is the primary reason for the requested estate planning that someone other than the protected person wants it done? Does the purpose of representation and the locus of the decision-making authority appear to be murky?

What accommodations are going to be necessary to work with the protected person? Who do you need to consult with to find out? What will you need to do to provide evidence that the protected person was competent to sign the estate planning documents when signed? Is the estate planning attorney able to make the necessary accommodations to get the job done? The protected person is a protected person for a reason. A plan must be made to identify the potential problems inherent in this type of representation and address them.

On top of everything else, the status of the protected person may change during the course of the representation. The answers to these questions may change. The estate planning attorney must be prepared to identify these changes and deal with the consequences. These could include the determination that what the estate planning attorney had originally agreed to do can no longer be done and the attorney must withdraw.

Capacity to hire the attorney

ORS 125.300(3) states that a protected person has the right to retain counsel. An estate planning attorney approached by a protected person for representation must also determine whether the protected person has the legal capacity to form a contract and hire the attorney.

Retaining an attorney is creating a contract. Persons are presumed to be competent to enter into a contract. *Cloud v. U.S. National Bank*, 280 Or 83, 90, 570 P2d 350 (1977). Under common law a protected person was presumed not to be able to enter into a contract. *First Christian Church v. McReynolds*, 194 Or 68, 74–75, 241 P2d 135 (1952)

Under current law, a protected person under a guardianship is not presumed to be incompetent. ORS 125.300(2). A protected person under a conservatorship is not competent to enter into a contract. ORS 125.300(2). A specific concern is that a retainer agreement entered into by a person who lacks the competence to enter into a contract can be voided.

In the case of a protected person, an attorney has certain tools to deal with the issue of the capacity to retain an attorney. The conservator has the authority to hire professionals on behalf of the protected person. ORS 125.445(25). So even if there is doubt about whether the protected person has the capacity to hire an attorney, the conservator can authorize it. Another option is to ask the court to appoint the attorney to represent the protected person. If the court or the conservator agrees, any doubt is removed. A clearly competent party has approved the contract. The terms of the retainer agreement have been approved and should be enforceable.

A concern associated with asking the court to appoint the estate planning attorney to represent the protected person is the concern that in a will contest the fact that a request was made could be considered an admission that the protected person lacked the capacity to create the estate plan. This concern can be addressed in the pleadings making the request.

Legal capacity to create the estate plan

The estate planning attorney must also determine whether the protected person has the capacity to execute the required estate planning document.

Generally, a person has the testamentary capacity to create a will if a person is 18 years of age or older or has been lawfully married, and who is of sound mind, ORS 112.225; *Administering Oregon Estates* (AOE-OSB), section 4.2-1

In order to be of sound mind to be able to make a will, a person must:

- be able to understand the nature of the act in which the person is engaged, that is, the execution of a will
- know the nature and extent of his or her property
- know, without prompting, the claims, if any, of those who are, should be, or might be the natural objects of the person's bounty
- be cognizant of the scope and reach of the provisions of the document. *Golden v. Stephan*, 5 Or App 547, 550, 485 P2d 1108 (1971)

Testamentary capacity is determined at the precise moment that he or she executes a will. *Perry v. Adams*, 112 Or App 77, 81, 827 P2d 930 (1992); *Matter of Unger's Estate*, 47 Or App 951, 955, 615 P2d 1115 (1980) citing *Kastner v. Husband*, 231 Or. 133, 136, 372 P2d 520, 522 (1962).

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To create a testamentary trust or a revocable trust, the settlor must have the capacity to create a trust. ORS 130.155. A person who has the testamentary capacity to create a will also has the testamentary capacity to create a revocable living trust. See comment by Valerie J. Vollmar, "The Oregon Uniform Trust Code and Comments," 42 *Willamette L Rev* 187, 249 (2006); A*dministering Oregon Trusts* (AOT-OSB), section 2.6-1

A protected person who is a protected person based upon "mental capacity" is presumed not to have the mental capacity sufficient to execute a will. *Wood v. Bettis*, 130 Or App 140, 142-143, 880 P2d 961(1994); GCT-OSB, section 4.18. However, if "mentally competent," a protected person has the power to make a will, change life insurance and annuity beneficiaries, and exercise a power of appointment, or elect to share in the estate of deceased spouse. ORS 125.455(1).

On the one hand, a protected person subject to a guardianship is presumed not to have the testamentary capacity to create a will. On the other hand, a guardianship must be designed to minimize restrictions to the protected person to what is necessary to meet the needs of the protected person. Somehow the presumption and the minimum restriction requirement must be reconciled.

Establishing that a protected person has legal capacity

If an estate planning attorney is representing a protected person, the protected person's capacity to execute the estate plan cannot be taken for granted. Following are some thoughts on various techniques for establishing and preserving evidence of testamentary capacity.

Recording the signing

The idea here is to memorialize the condition of the protected person at the time of the signing of the will or other estate planning documents. Typically, the protected person's attorney asks the protected person questions whose answers are intended to demonstrate testamentary capacity at the time of the signing.

Videotaping. The problem with videotaping is that there is no perspective, no basis for comparison. What is videotaped may demonstrate the protected person having a really good day when compared to other persons of a similar age.

However, those other elderly people are not on the videotape. You are relying on the judge to be able to correctly appraise behavior that shows a person who is merely elderly from behavior that reveals incapacity. The videotape requires the judge to be able to put what appears on the video in a proper perspective. The litigators interviewed all agreed that videotaping is not adviseable.

Audio taping. The advantage of audio taping the signing is that it preserves what is important, the answers to the questions, without any distractions due to the protected person's appearance or manner. The focus is on the ability of the protected person to express his or her comprehension of what the protected person needs to be aware of in order to establish capacity. The litigators interviewed had mixed feelings about audio taping.

Witnesses

In addition to the witnesses who will see the signing and presumably sign the attestation clause to the will and the affidavit of attesting witnesses, the attorney may choose to bring in neutral persons who are familiar with the protected person. These persons could be friends, caregivers, or healthcare professionals. They would be in a position to offer some perspective with regard to how the protected person was doing on the day of the signing. The best perspective would come from an expert witness who can offer an opinion as to what the expert is observing. These additional witnesses may also be more likely to be able to answer any additional questions that might be asked at a subsequent trial.

The attorney

There is anecdotal evidence that in establishing the legal capacity to create an estate plan, a court relies heavily upon the testimony of the attorney who conducts the signing. Regardless of whether or not this is correct, the estate planning attorney should not rely solely upon this. If an estate plan for a protected person is being contested, the estate planning attorney who supervised the signing will be expected to testify as to why the attorney believed that the protected person was good to go on the day the estate plan was signed.

Actions to take prior to the signing

The estate planning attorney can do several things prior to the signing to make sure that the protected person has the necessary capacity.

Consult the health care professionals and care givers who work with the protected person. Is the protected person more active and alert at certain times of the day? What is the best way to communicate with the protected person? What things might be distracting or confusing to the protected person?

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Meet with the protected person on as many occasions as necessary to become comfortable with the protected person's strengths and limitations. Did the protected person remember what was discussed in prior meetings? Did the protected person appear to have thought about or considered what had been previously discussed? Did the protected person ask good questions? Did the protected person consistently express the same concerns or goals? Be in a position to say that the estate plan reflected input from the protected person.

Learn the protected person's strengths and weaknesses and adjust accordingly. Get a list of the medications that the protected person is taking and be aware of what they are for and how they might affect the protected person. When testifying to the judge, admit the existence of those strengths and weaknesses and discuss how they were addressed and accommodated.

Address any concerns about undue influence. In the future, a court may consider whether the estate plan created for the protected person is the product of undue influence. Are any of the undue influence factors potentially in play? See *In re Estate of Reddaway*, 214 Or 410, 329 P2d 886 (1958). If they are, the estate planning attorney needs to address these concerns as part of the estate planning process. The estate planning attorney may be asked in the future how these concerns were addressed.

Questions asked at the signing

At the signing, the estate planning attorney will ask the protected person questions to establish the protected person's competence to execute the estate plan.

In asking these questions, the attorney should treat the protected person like a trial court witness. A litigation attorney will typically interview the witness before trial to learn what information the witness has to share with the court, brief the witness as to the questions the attorney intends to ask, and learn the answers the witness has to these questions. Frequently, the litigation attorney discovers during these pre-trial discussions that a witness can provide little or none of the information needed to address the contested issues in the case. If that is the situation, the witness either is not called to testify or during testimony is not asked questions that the witness cannot answer.

In a similar way, an estate planning attorney working with a protected person must know prior to the signing what questions the protected person can and cannot answer. If a protected person cannot answer the questions necessary to establish competence, then—like a litigation attorney in a similar situation—the estate planning attorney must accept that the witness (the protected person) cannot testify. Trying to find a way to get a witness or a protected person to provide testimony that he or she cannot provide is asking for trouble.

The point of asking the protected person questions is to preserve the protected person's testimony, not the testimony of the attorney who poses the questions. The objective is to show the ability of the protected person to provide information, not to simply say "yes" to information provided by the attorney. If the objective is to convince someone that the protected person is competent, asking leading questions is neither effective nor convincing.

When asking questions to establish competence, the attorney should frame the questions in a way that makes it as easy as possible for the protected person to understand and respond accurately. One way to do this is to avoid asking questions that require the protected person to provide a lot of specific detail: e.g.: What are the names of your children? When were your children born? What schools did your children attend? What are names of their wives and children?

The attorney wants to give the protected person the best opportunity to succeed. An example of a possible line of inquiry might be:

Q. Do you know anyone name Robert Smith?
A. Yes.
Q Who do know named Robert Smith?
A. My son.
Q. Tell me about your son, Robert Smith.

Then follow up with questions based upon the protected person's recollection.

An attorney can do the same thing to establish an awareness the protected person's financial matters: What is a bank account? Do you have a bank account? Tell me about your bank account. What is a credit card? Do you have any credit cards? Tell me about your credit cards. Do you have a house? Tell me about your house.

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Good work by an attorney for a protected person may involve more than taking dictation from the client.

In this way the protected person tells the court or the witnesses what she or he *knows* at the time of the signing, without sorting through what the protected person may or may not *remember*.

Crafting the document: comprehension

Even if the protected person has the testamentary capacity to execute a will, the attorney in drafting it must consider whether to include provisions that the protected person is not in a position to comprehend, much less consent to. One of the requirements for testamentary capacity is whether the protected person is "cognizant of the scope and reach of the provisions" in the estate planning document. It may be easier to get the court to accept the capacity of the protected person to understand the estate planning document if that document is relatively easy to comprehend.

The best way to transform something complex into something simple is to eliminate the complexity. We were advised of a will created for a protected person that consisted of five or six sentences. The will expressed what the protected person was capable of comprehending and expressing—nothing more. We are advised that this will was successfully probated.

Crafting the document: avoiding objections

Issues of capacity and the other problems discussed up to this point primarily arise if someone objects to the estate plan. It is amazing what can be accomplished if no one objects. If the distribution provisions of a will do not substantially deviate from what would occur if there was no will at all, then that will is less likely to be contested.

The creation of an estate plan for a protected person appears to become a problem when there is a significant change in the devisees. The distribution plan either ignores intestate heirs or eliminates devisees in an existing estate plan that was created when the guardianship or conservatorship was not needed.

One way to avoid a challenge to an estate plan is to design it in a way that is less likely to be challenged. For example, in carrying out a protected person's wishes to provide for someone new, it may not be necessary to disinherit everyone else. The new devisee could be added to the existing heirs or devisees whether those existing heirs or devisees are currently the intestate heirs or the devisees in a will.

Good work by an attorney for a protected person may involve more than taking dictation from the client. It may also involve working with the protected person to accomplish his or her goals in a way that the court and other interested parties are likely to acknowledge and accept.

Estate planning: guardians and conservators

Even if the protected person lacks the legal capacity to create or revise an estate plan, guardians and conservators have the authority to engage in estate planning-type activities for a protected person.

A guardian has the authority to make funeral arrangements and authorize the disposition of the protected person's remains in a manner akin to those provided for in an appointment of person for disposition of remains. ORS 125.315(1)(d)(A).

A guardian has the authority to withhold health care for a protected person in a manner similar to a health care representative in an advance directive. The prior applicable statute was amended in 2019 to clarify this. ORS 125.315(3).

An attorney working on an estate plan for a protected person subject to a guardianship would want to discuss these issues with the protected person and discuss her or his wishes with the guardian. This would be particularly important if capacity is an issue for the protected person. If a guardian has the authority to make these decisions, then the court does, too. If necessary, a guardian could be ordered to address these issues, preferably in the form of a stipulated order.

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ORS 125.440 states that a conservator has the authority with the prior approval of the court to:

2. Create revocable or irrevocable trusts of property of the estate. A trust created by the conservator may extend beyond the period of disability of the protected person or beyond the life of the protected person. A trust created by the conservator must be consistent with the will of the protected person or any other written or oral expression of testamentary intent made by the protected person before the person became incapacitated. The court may not approve a trust that has the effect of terminating the conservatorship unless:
   (a) The trust is created for the purpose of qualifying the protected person for needs-based government benefits or maintaining the eligibility of the protected person for needs-based government benefits
   (b) The value of the conservatorship estate, including the amount to be transferred to the trust, does not exceed $50,000
   (c) The purpose of establishing the conservatorship was to create the trust, or
   (d) The conservator shows other good cause to the court. ...
4. Disclaim any interest the protected person may have by testate or intestate succession, by inter vivos transfer, or by transfer on death deed

Anecdotal evidence indicates the courts routinely approve trusts created for protected persons under ORS 125.440(2)(a).

Regardless of the legal capacity of the protected person, it would make sense to attempt to obtain the cooperation and approval of the guardian or the conservator in developing the estate plan for the protected person. It may not always be possible, but it is adviseable for the attorney for the protected person to seek to enlist the assistance and support of the conservator or the guardian in preparing an estate plan for the protected person.

Conclusion

We have identified the likely categories that estate planning attorneys may fall into with regard to creating an estate plan for a protected person. Depending on the category that may apply to you, the following are some thoughts to consider.

If you are an estate planning attorney who would never under any circumstances prepare an estate plan for a protected person, your caution is justified. Only take on the work if what you are being asked to do makes sense in the context of the protected person's current situation. It is possible to successfully and safely prepare an estate plan for a protected person if you:

- focus on representing the protected person and not other interested parties
- take nothing for granted; make sure you have the authority to do what you are doing; make sure that you can prove that the protected person has the legal capacity to do what she or he is being asked to do
- work within the context of the protected person's strengths and weaknesses
- are willing to put in the additional time and effort
- work with the guardian and/or conservator
- try to develop an estate plan that can survive or avoid serious objections

If you are an attorney who believes that preparing an estate plan for a protected person is the same as any other estate planning with some additional care required at the signing, you are mistaken. See above. Estate planning attorneys are used to working in a context where the attorney and the client control most if not all of the moving parts. When one is in a situation where litigation is highly likely, the attorney and client may not completely control any of the moving parts and must plan accordingly.

If you are an estate planning attorney who has never thought about creating an estate plan for a protected person, keep in mind that just because you have not planned for something does not mean that it will not occur. You may be an email away from having a valued client or referral source drop a situation like this onto your lap. The issue is likely to come up when you are least prepared to deal with it. Now you are in a better position to develop a policy for how you will address estate planning for a protected person should the issue arise in your practice. ■

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Mediation in contested protective proceedings

By Judge Katherine Tennyson, ret., and Steve Owen, Attorney at Law

Katherine Tennyson is a former Chief Probate Judge for Multnomah County. She retired from the bench in June 2019 and now splits time among many activities—including mediating, dog walking, and gardening.

Steve Owen is a solo practitioner in Portland. Over the last two decades his practice has been limited to handling contested matters in the probate courts in Oregon. Currently, he primarily acts as a mediator in such disputes.

Unless you started practicing law prior to around 2008, you would not remember a time when lawyering skills in protective proceeding cases excluded an understanding of the effective use of mediation. Prior to that time, as a general rule, mediation in probate cases was neither required nor sought. Sure, adept lawyers always tried to work on resolving cases by agreement. However, the assistance of a neutral person just did not occur to most people. Today, mediation in contested protective proceedings is becoming more the rule and not the exception. (For example, Multnomah County SLR 9.01.)

The reasons why mediation wasn't used were plentiful, including the belief that skilled practitioners should be able to solve these problems, and if they cannot, then a judge needs to step in. And no one can negotiate with someone who does not have capacity. And, of course, the tried and true: "We've never done that before; why would we start now?"

Over time, many lawyers and judges came to recognize the "why" has an answer: the cost of litigation. When we speak of cost, we are talking not just about the quantifiable cost of lawyer fees, expert witness fees, trial fees, and all the other financial aspects of trying a case. Those do matter, because the proposed protected person is generally paying for all of it, thereby diverting money from the cost of caring for the person who actually earned the money. We are also talking about the emotional cost of litigation. Families embroiled in a fight that spills over to the courtroom seldom find their way to sharing a Thanksgiving table the following year.

Now that mediation in contested protective proceedings is more common, practitioners in this area need to know how to effectively represent clients. Furthering your client's interests in mediation comes down to being prepared and understanding your client's goals and circumstances.

These actions will include the ongoing cost-benefit analysis of deciding whether to mediate the case in the first place. This is obviously true in counties that do not require mediation; but even in counties where it is required, a party can request a waiver of mediation for good cause. See Multnomah County Supplemental Local Rule 12.045 (5). Good cause can exist in many situations, and typically an experienced judge will understand most reasons for the request. Good cause can include simple fiscal efficiency. A waiver might be appropriate if prepping and trying the matter in controversy would take less time than prepping and attending the mediation session. One argument for mediation waiver that will seldom find traction, however, is some version of "this case won't settle." Impossible cases settle every day.

There are times when mediation is neither possible nor practical. Those include matters where the respondent objects to the protective proceeding. In representing an objecting respondent, you may find that your client is adamant that he or she does not lack capacity and wishes to proceed to hearing at once. Given the substantial interference and intrusive nature of a protective proceeding, an expedited hearing may be set which leaves no time to mediate. The respondent has a right to be heard on the matter and counsel has an ethical duty to maintain a normal attorney-client relationship with such a client, to the extent possible. RPC 1.14(a). A lawyer is required to abide by the client's decision on whether to settle a matter. RPC 1.2.

Once it is determined that a matter is right for mediation, practitioners must prepare for it in the most effective way possible.

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First and foremost, work toward hiring the right neutral party who will be a good fit for your client, his or her circumstances, the family situation, and the legal matters at issue. There are different types of mediation approaches, and every mediator brings his or her style and personality to the table. Certain clients may do better with a strong evaluative-based mediator than a softer-touch facilitative mediator, and vice versa. If you are unfamiliar with the approaches and styles of a potential mediator, call and ask. The mediator wants to be the right fit as well and will sometimes pass on the matter if she or he does not seem to be the right fit.

Once a mediator is chosen, it may also be a good idea have a phone conversation before the session. Yes, you can speak to the mediator in preparing for the mediation session. (Some practitioners appear to think that this is not proper. It is—and can be helpful in resolving matters.) This contact can apprise the mediator of information that is helpful to understanding your client's position that may not have been included in your mediation submission.

Preparation for successful mediation includes an understanding of the logistics of any solutions proposed to resolve disputed matters. Your client's belief that it may be an option to have the respondent live with her brother—who hasn't been consulted on this—and have paid caregivers come in, but the client isn't really sure about the respondent's assets, is not a great way to get a matter resolved.

Go into mediation knowing what resolution is possible to achieve and have the necessary information to back this up. This is also true if a possible solution might be the appointment of a professional fiduciary.

Has that fiduciary been identified, are they willing to serve, and serve under the terms that are being contemplated? These questions must be answered, and if they cannot be answered at the mediation session, resolution is harder to achieve.

While a pause in a mediation to gather information is sometimes a functional path to agreement, a pause can also mean a breakdown in momentum toward settlement.

Preparation also includes educating your client on the realities of the situation and the nature of resolving a case through a negotiated settlement. The mediation session should not be the first time your client hears the other side's evidence and arguments. A party may feel very strongly about his or her positions and the evidence supporting them, but also needs to know that different positions and evidence will be presented to the mediator or the court. Parties to a mediation also have to know that the only way a case gets resolved is if the parties are willing to compromise their positions somewhat to bring about settlement.

A successful mediation session is not the same as a day in court. While you do need to zealously advocate for your client, your goal is not to prove to the mediator that your client wins and that the mediator just needs to get the other side to fully capitulate. That is not likely to happen and is not conducive to settlement. Trust your mediator to do her or his job, which is to help the parties reach a settlement, not issue rulings.

A final note on the current practice of using Zoom video or similar platforms to conduct mediation sessions remotely. No one really knows how long this will continue and how the COVID-19 pandemic might change the nature of mediation procedure. On the one hand, video mediation makes it a lot easier for out-of-area parties and parties hampered in transportation options to participate. On the other hand, typical free-flowing conversation can be difficult, confidentiality can be a problem, and some believe that face-to-face contact enhances the ability to settle disputes. No matter the difficulties, disputes are getting resolved through video mediation. Only time will tell how this will play out going forward.

Mediating contested protective proceedings is different from most cases, due to the issues at hand. Parties are negotiating how a person's life will be structured and who will make decisions for him or her. In doing so, the sole focus should always be on what is in the best interest of the respondent or protected person. If the parties take this approach, prepare for mediation, and show compassion toward other stakeholders, these matters are likely to be resolved by agreement. ■

From a battle-worn warrior

How to minimize litigation when initiating protective proceedings

By Bonnie Richardson, Attorney at Law

Bonnie Richardson is the managing partner of Richardson Wright LLP. She has been a trial attorney for 24 years. Bonnie practices in a variety of litigation proceedings, preferring to represent select clients in estate and trust litigation and certain contested protective proceedings. She is passionate about protecting the elderly.

Most estate administration attorneys I know do not like litigation. After all, most of you are also estate planners and it is usually your goal to write a plan that avoids future family squabbles. Protective proceedings are no different. When you are approached by a family member seeking your help for the protection of their loved one, most of you want to use your skills to assist in bringing peace and a well-thought-out process for care, not to fight with people. There will be times when litigation might be unavoidable, but you can always work to minimize conflict. And who knows? Perhaps your efforts might even keep that dreaded battle in court from ever taking place. In this article, I'll share with you my observations and thoughts on ways to keep that court fight from going "Full Metal Jacket."

Know thy client

Even if you have represented the client in the past on other matters, if you are being asked to step in to assist with initiating protective proceedings, take the time to find out as much as possible (and as soon as possible) about all the family dynamics. You want to know early on whether there are any potential issues with family members or with people close to the proposed protected person (AKA "the respondent"). These are uncomfortable conversations for clients to have, and most of you are very good at getting people to be open in their discussions about their family dynamics. So use those skills! Ask to talk with other family members, if necessary, in order to get a feel for the family story and situation. If you can sniff out the issues or the people who like to create problems, you can start planning for and defusing any future issues. More important, when you get to know your client, you will understand his or her motivations and whether the client is acting in the best interest of the respondent.

Communicate

Most problems in relationships stem from a breakdown in communication. Initiating a proceeding of any kind usually involves some sort of family or personal relationship. These relationships, like any other, can have a major breakdown due to bad or no communication. Before you begin filing paperwork, think about how you will communicate with all the people affected by the proceeding. Because you have taken that time to understand the family, you will already know about the relationship dynamics. Most of the time, communicating openly and directly with family members helps minimize the desire of some to lash out.

Often, families come to me wanting to litigate because they felt they were left in the dark and they believe that things were hidden from them for an ulterior purpose. Communication about the process ahead of time helps people understand, even if they don't like what they are hearing. Of course, there will be times when it is best not to involve some family members in the process and that is where you need to use your good judgment. If you have taken the time to understand the client and the family, you can be in a better position to advise the client on what is best course of communication.

You do not always have to be the one who communicates with family members. Determine whether the client is a good communicator. If not, then look for someone in the family who is the "peacemaker type." Sometimes this person is a neighbor or pastor or friend of the respondent. Use your knowledge of the family to find the best person to help the family understand the process. When you send a written communication, try to be warm and kind rather than lawyerly, cold, and evasive. Even when you send those required legalese-filled notices, consider attaching a cover letter that is polite, professional, and references the enclosure.

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Litigation *Continued from page 11*

Know thyself

Let's say you have done all the preventive work, but you still see hostility on the horizon. If you are the kind of person who would rather be the peacemaker, think about bringing in a litigator early on in those cases where you can feel the fighting mood in the air. Usually, that is created by a person you have identified as the one who wants to cause problems—and not for the good of the respondent. A good, well-qualified litigator who is brought in early can help prevent the flare-ups. The litigator can write to the angry family member and explain the litigator's role and what will happen if a contested proceeding ensues. This allows you to play the role of the "good lawyer," who is trying to make this go as smoothly as possible. You can explain the extra expense of the litigator and that you would like to minimize that expense as much as possible by not escalating matters. Sometimes fear of expenses will outweigh emotions.

Help lawyer up

I know this sounds counter to minimizing litigation, but it really can work in some cases. When emotions prevail or when someone is dead set on litigation, you have to get ready for the battle to come. First, consider asking the court to appoint a proposed attorney to represent the respondent. Also consider recommending certain attorneys to other family members who may fear being attacked. Think of an attorney who will be appropriate for the situation. If the only person who is likely to contest the proceeding is the respondent, find a lawyer who is both a good attorney and a good fit for that particular person. Sometimes courts will ask lawyers to do this pro bono in appropriate cases where there are little to no funds. Good lawyers who represent the respondent will assess the amount of the assets along with the size of the conflict and adjust their role accordingly. Let me explain by way of a past example.

The respondent was a 20-something young woman whose mental illness had descended to the point of needing a guardianship, which was initiated by her loving parents. The parents' attorney and the court felt it would be best if an attorney was the voice for the respondent.

The court appointed me to serve as her attorney. I was able to visit with her through phone calls to the facility where she was temporarily residing. She explained to me that she wanted to object because she believed her mother to be possessed by aliens, but her father was fine because he controlled the aliens. I tried to see if we could work out an arrangement with both parents as co-guardians for her, but quickly determined through conversations with the parents' attorney that this would not be practical for various reasons. I adjusted my time accordingly, making sure not to spend too much time in my representation. I appeared via phone at the hearing on behalf of my client and explained to the court why she objected—aliens and all. The court listened to the presentations and granted the petition for guardianship. I then worked with the parents' attorney to draft language in the order to soften the blow to the protected person—appointing her mother but with the understanding that her father would be there to help. The entire engagement took about two hours. The parents' lawyer saved a ton of his clients' money and the court's time by bringing in a lawyer to help be the voice of the protected person. Although litigation took place, it was appropriately minimized.

Go for early ADR

If you don't feel you are making progress in communicating with others, round everyone up for a judicial settlement conference or a private mediation. The respondent might just want to talk to the person in the robe in order to feel seen, heard, and understood. In that case, a judicial settlement might work well, where the respondent still gets to take part in the process. Estate practitioner Amy Bilyeu describes it this way: "These hearings can be extremely hard on the protected person and traumatic and damaging to their health. Sometimes, we'll do a judicial settlement conference so a judge can tell them what most likely is going to happen in order to save them the cost and potential humiliation of the hearing." Often, objecting family members just want to take part in the decision making, and a mediation will help them contribute in a more collaborative and less adversarial setting.

Litigation is not always bad

I know, I know—leave it to the litigator to talk about the benefits of courtroom drama! When you are petitioning to take away control over a person's life or finances, you are taking a very impactful and drastic measure. It should not be done lightly or without careful and due consideration. You can set it all up to try and avoid anyone challenging your client's cause, but the system is designed so that people have a way to make their voices and positions heard, even if it is not in line with what the petitioner desires.

Courts want to make sure that the protected person is indeed protected and that the proceedings are proper and just. If someone is determined to challenge your client, then that is why we have our court system. And sometimes that is a good thing. ■

K Plan eligibility and benefits

By Diane Wiscarson, Attorney at Law and Taylar Lewis, Attorney at Law

Diane Wiscarson is the founding attorney of Wiscarson Law, the only firm in Oregon with a primary practice area of special education law for families. She has helped thousands of Oregon and Washington families obtain appropriate services and placements for their special needs children in public schools and education service districts in both states.

Taylar Lewis is an attorney with Wiscarson Law. Taylar previously served as a law clerk at the firm while attending the University of Oregon School of Law, where she earned her J.D.

The Community First Choice (CFC) Medicaid option under the Affordable Care Act § 2401 provides for both in-home and community-based supports for elders and people with an intellectual or developmental disability. The CFC is commonly referred to as the "K Plan," presumably because it falls under § 1915(k) of the Social Security Act. 42 CFR § 441.500 et. seq. In Oregon, the K Plan is also referred to as the "Oregon K Plan."

The value for K Plan recipients is the ability to receive services in their homes and/or communities, which enables maximum personal independence. OAR 411-030-0002. In-home services are provided to people who meet the established priorities for services as set forth in OAR Chapter 411, Division 15, and have been assessed in need of a service provided in OAR Chapter 411, Division 30. OAR 411-030-0040(1).

Applicants must qualify for Medicaid to be eligible for the K Plan.

In order to have access to the Oregon K Plan, an applicant must qualify for an Oregon Medicaid program.

People over 65 must specifically qualify for the Oregon Supplemental Income Program Medicaid (OSIPM). OAR 411-015-0100(1); OAR 411-030-0040. Individuals are qualified for OSIPM if they earn less than 300% of the Supplemental Security Income (SSI) federal benefit rate. According to the Social Security Administration, the SSI federal benefit rate for 2021 is $791 per month for individuals and $1,991 per month for couples. There are also resource limitations for OSIPM, although with proper planning it may be possible to overcome both income and resource limitations, depending on the specific set of circumstances.

The other Medicaid qualification is that a family's income is up to 138% above the federal poverty level, which in 2021 is $26,500. Children whose families do not qualify for Medicaid can still qualify for the Oregon K Plan if the child is eligible for Disability Department Services (DDS). OAR 411-015-0100(1); OAR 411-030-0040.

What eligibility requirements follow if an applicant qualifies for Medicaid?

For an applicant to qualify for the Oregon K Plan, he or she must be either a person with an intellectual or developmental disability or—more commonly for elders—a person who needs nursing-home level of care. A person's specific needs and the level of care required to support those needs must be determined through an assessment at the first application, and then annually.

Various assessments are used in Oregon, depending on the person's specific difficulties. The Client Assessment and Planning System (CAPS) is used for nursing facility level of care. CAPS is used to establish the need for a nursing facility level of care by comprehensively evaluating a person's physical, mental, and social functioning, identifying risk factors, individual choices and preferences, and the status of service needs. See https://www.oregon.gov/dhs/SENIORS-DISABILITIES/DD/CompassWaiverRulesPolicy/K-Plan-Amendment-Approved.pdf

The Oregon Needs Assessment (ONA) is used for individuals with intellectual or developmental disabilities to assess eligibility based on either disability or level of care. OAR 411-425-0055. The Level of Care (LOC) assessment is used to determine whether a person with an intellectual or developmental disability requires an intermediate care facility. The ONA is a functional needs assessment, and the LOC summary includes areas of major life activity where there is significant impairment that requires supports and those major life activities where significant support is not required. OAR 411-425-0055(1)(a)(B). The functional needs assessment identifies an individual's ability to perform Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL). OAR 411-425-0055(1)(b)(A).

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K Plan *Continued from page 13*

ADLs include such tasks as bathing and personal hygiene, cognition (using information, making decisions, and getting daily needs met), dressing and grooming, eating, elimination, (bladder, bowel, and toileting), and mobility, which includes ambulation and transfer. OAR 411-015-005; OAR 411-015-006. IADL, also called self-management tasks, include housekeeping, laundry, shopping, transportation, medication management, and meal preparation. OAR 411-015-007(1).

Intellectual or developmental disability eligibility

To be eligible for the Oregon K Plan as a person with an intellectual disability, the applicant must have a history of an intellectual disability and significant impairment in adaptive behavior prior to his or her eighteenth birthday. OAR 411-320-0080(4).

K Plan eligibility for a developmental disability requires a significant impairment in adaptive behavior and a diagnosis prior to the individual's twenty-second birthday. OAR 411-320-0080(5). Developmental disabilities other than an intellectual disability include autism, cerebral palsy, epilepsy, and other neurological conditions that originate in and directly affect the brain. OAR 411-320-0080(5)(a)(A).

Child eligibility

Children with an intellectual or developmental disability can also be eligible for the Oregon K Plan. Early childhood eligibility (children under seven) and school-age eligibility (children five or older) require either documentation of a standardized assessment by a qualified professional or a medical statement by a medical professional. The documentation must show that the child has an intellectual or developmental disability and the child's disability affects at least two areas of adaptive behaviors. OAR 411-320-0080(6). Areas of adaptive behavior include adaptive, self-care, or self-direction; receptive and expressive language or communication; learning or cognition; gross and fine motor; or social. OAR 411-320-0080(6)(a)(B).

Redetermination of eligibility varies for children. Redetermination for early childhood must be done before the age of nine if an assessment was used as documentation or before the age of seven if a medical statement was used. School-age children complete redetermination of eligibility between the ages of sixteen and eighteen for intellectual disability and between the ages of seventeen and twenty-two for a developmental disability. During that redetermination process, documentation of the child's disability must be from the past three years. Guardians of a child must be notified when a redetermination process is necessary. OAR 411-320-0080(6)(a); OAR 411-320-0080(6)(b); OAR 411-320-0080(7)(f).

Elder eligibility

Though many elders may not qualify for the Oregon K Plan because they have no intellectual or developmental disability, they may qualify if they require nursing-home level of care. A nursing home LOC is established when an individual meets at least one of the priority levels as set forth in OAR 411-015-0010. Mobility, eating, elimination, cognition, and the amount of assistance required for each is carefully assessed. When the CAPS is completed, it determines the LOC for both home and community-based care and nursing facility care. *Id*.

How to apply

The Community Developmental Disabilities Program (CDDP) accepts individual applications for children with an intellectual or developmental disability for the K Plan and is part of the Oregon Department of Human Services (ODHS). OAR 411-030-0002, et. seq.; OAR 411-034-0035(2). Each county in Oregon has a contact organization to provide applications, questions, and assistance. A complete listing of the counties in Oregon with contact information for each can be found at https://www.oregon.gov/dhs/SENIORS-DISABILITIES/DD/Pages/county-programs.aspx.

An older adult or an adult with a disability must apply for K Plan services through a local office of ODHS Aging and People with Disabilities (APD) or Area Agency on Aging (AAA). Those area offices are all listed at https://www.oregon.gov/dhs/Offices/Pages/Seniors-Disabilities.aspx

What benefits can applicants receive?

The benefits of the K Plan program are numerous for eligible applicants. States such as Oregon that have elected to provide CFC are required to provide assistance with ADLs, IADLs, and health-related tasks through hand-on assistance, supervision, and/or cueing. 42 C.F.R. § 441.520 (a)(1). In addition, the state must also provide services to help with the acquisition, maintenance, and enhancement of skills necessary for the person to accomplish ADLs, IADs, and health-related tasks. 42 C.F.R. § 441.520(a)(2).

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Depending on their needs, applicants may qualify for assistance, including community transportation, electronic back-up systems or assistive devices (durable medical equipment), home delivered meals, contracted nursing services, training regarding employer responsibilities, environmental modifications, and transition costs for housing for people when they relocate from an institutional setting. See https://www.oregon.gov/dhs/SENIORS-DISABILITIES/KPLAN/Pages/Frequently-Asked-Questions.aspx.

There are also several programs for which adults and children can qualify. They include Children's Intensive In-home Services; Skilled Acute Crisis Unit; residential group homes; supported living; host homes; foster homes; and family support services. See OAR 411-415-0070.

In summary

The Oregon K Plan application process can be broken down into three main steps. First, applicants should make sure they are qualified for Medicaid. Second, applicants must be determined eligible because of an intellectual or development disability or because they need a nursing-home level of care due to a significant impairment that affects an activity of daily living. Third, actual benefits are determined by specific assessments of need. Applicants should remember that benefits can be transferred between counties and also appealed if the applicant disagrees with the benefits received. ■

Online resources for elder law attorneys

Elder Law Section website
Links to information about federal government programs and past issues of the Section's quarterly newsletters

National Academy of Elder Law Attorneys (NAELA)
Professional association of elder law attorneys

National Center on Law and Elder Rights
Training and technical assistance on a broad range of legal issues that affect older adults

OregonLawHelp.org
Helpful information for low-income Oregonians and their lawyers

Aging and Disability Resource Connection of Oregon
Includes downloadable *Family Caregiver Handbook*, available in English and Spanish versions

Administration for Community Living
Information about resources that connect older persons, caregivers, and professionals to federal, national, and local programs

Big Charts
Provides the price of a stock on a specific date

National Elder Law Foundation
Certifying program for elder law and special-needs attorneys

National Center on Elder Abuse
Guidance for programs that serve older adults; practical tools and technical assistance to detect, intervene, and prevent abuse

Common Scams That Target the Elderly
Special report on scams related to covid-19

Guide to Transportation for Seniors
A helpful visual guide to getting older and getting around

Guardianship and the Right to Visitation, Communication, and Interaction
Legislative fact sheet from the American Bar Association Commission on Law and Aging

Oregon Revised Statutes
Oregon laws

Consumer Financial Protection Bureau (CFPB), Working with older adults
Resources to help those who serve older adults and family members managing the finances of others

Elder Law Section News

Update from the CLE sub-committee

Rebecca Kueny, Chair

The CLE subcommittee has decided to make changes, some of which are long term, some of which are temporary due to COVID-19.

Temporary cancellations

The unCLE was cancelled in May 2020 and May 2021 because of the pandemic. The feedback that we received was overwhelmingly in favor of postponing the unCLE until we could reconvene in person. We are hopeful that we will meet in Eugene in May 2022.

Additional CLE seminars

After reviewing the Elder Law Section CLE survey results, the committee looked at the requests from Section members for education. Because the unCLE was canceled the last two years, the committee decided to create two series in the next year to provide education on the top-rated topics.

July series: In July of this year, the committee will host a three-part series on additional information regarding long-term care benefits. There will be three lunchtime webcasts, which are noted below in the upcoming CLEs.

January series: In January 2022, the committee will host a multi-part series on Medicaid benefits and how to complete a Medicaid case from beginning to end with a client. This is still in progress for planning; and the Committee is working to create a comprehensive curriculum that will train those practitioners interested in creating or expanding a Medicaid practice.

October CLE program

This October, the annual Elder Law Section CLE will occur as always on the first Friday of October. This year's CLE program will address the basics of elder law, focusing on incapacity planning and long-term care benefits. The program will be virtual this year. We have high hopes that next year we will be together again in Portland.

Speakers: The Section will take a new approach, with two presenters on each topic. The goal is to start training and mentoring practitioners who are interested in getting into the realm of public speaking. We will be partnering practitioners who would like mentorship with practitioners who have experience in public speaking and education.

In addition, we are working hard to expand the diversity of our speakers. The committee is very excited about these changes and the growth in educational oppotunities that we foresee for our Section.

If you are interested in speaking or would like to nominate someone to speak, please reach out to me directly. The most difficult part about creating the curriculum is finding the appropriate speakers. Who do you think would be a great speaker for our community?

Long-term changes

A few years ago the Elder Law Section accepted responsibility for guardianship and conservatorship CLE seminars. At the time, it made sense to add the relevant topics to our rotating curriculum in October. When we conducted our survey this past year, it became clear that guardianship and conservatorship education is crucial material to our Section. Therefore, we have decided to take it out of the October curriculum rotation and schedule it on a biennial calendar for the first Friday in February. Section members will see a guardianship and conservatorship CLE seminar every two years, beginning February 2023.

Upcoming CLE programs

July 14, 2021: *Estate Recovery: A Frank Discussion* with Darin J. Dooley (Draneas Huglin Cooper LLC), Richard H. Mills (Department of Human Services), and Julie Meyer Rowett (Yazzolino & Rowett LLP)
July 21, 2021: *SSI & SSDI: What a Practitioner Needs to Know* with Amanda Robichaux (Kerr Robichaux & Carroll Law Office)
July 28, 2021: *The Fundamentals of Special Needs Trusts and ABLE Accounts* with Rebecca S. Kueny (Kueny Law LLC)
October 1, 2021: Basic Elder Law CLE
January 2022: Medicaid Series (Dates and information to be determined)
May 6, 2022: unCLE in Eugene, Oregon

On behalf of the CLE Committee, I want to thank the Section members for their feedback. It was very difficult for us to cancel the unCLE for the past two years. In doing so, however, the committee had time to look deep into our goals for upcoming years. If you have any requests for curriculum or would like to join the committee, you are welcome to reach out to me directly. ■

Important elder law numbers

as of
July 1, 2021

Supplemental Security Income (SSI) Benefit Standards	Eligible individual ..... $794/month Eligible couple $1,191/month
Medicaid (Oregon)	Asset limit for Medicaid recipient ..... $2,000 Burial account limit ..... $1,500 Long term care income cap ..... $2,382/month Community spouse minimum resource standard ..... $26,076 Community spouse maximum resource standard ..... $130,380 Community spouse minimum and maximum monthly allowance standards ..... $2,177.50/month; $3,259.50/month Excess shelter allowance ..... Amount in excess of $653.25/month SNAP utility allowance used to figure excess shelter allowance ..... $442/month Personal needs allowance in nursing home ..... $64.94/month Personal needs allowance in community-based care ..... $177/month Room & board rate for community-based care facilities ..... $617/month OSIP maintenance standard for person receiving in-home services ..... $1,294/month Average private pay rate for calculating ineligibility for applications made on or after October 1, 2020 ..... $9,551/month
Medicare	Part B premium ..... $148.50/month* Part D premium ..... Varies according to plan chosen Part B deductible ..... $203/year Part A hospital deductible per spell of illness ..... $1,484 Skilled nursing facility co-insurance for days 21–100 ..... $185.50/day

* Premiums are higher if annual income is more than $85,000 (single filer) or $170,000 (married couple filing jointly).

Oregon State Bar

Elder Law Section

Newsletter Committee

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