

Partnerships in Law and Aging/ Pro Bono

Innovative Model Represents Future of Pro Bono Legal Services

By Elaine Harrison

As government and corporate funding for legal services is on the wane, the need for free legal services is at an all-time high for the low-income elderly, who often must rely on the largesse of the private legal community to answer the call for help. And while the need for legal help is on the rise, so too is the competition within the legal community to establish a strong pro bono culture within law firms and corporate legal departments.

The Center for Disability and Elder Law (CDEL) of Chicago meets the legal needs of the elderly while providing pro bono opportunities for Chicago's most prestigious law firms and corporate legal departments. With an annual budget of \$500,000 in funding for organizational operations, and the volunteer efforts of 1,100 legal professionals from throughout Chicago's legal community, in 2003, CDEL provided in excess of \$3.5 million in legal services for 3,508 low-income clients.

Founded in 1984, CDEL provides pro bono civil legal services for low-income elderly and disabled persons in

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Elaine Harrison is the communications director for the Center for Disability and Elder Law in Chicago.

The 2005 National Aging and Law Conference has been rescheduled for Spring 2006 to avoid conflicts with the White House Conference on Aging, which convenes for several days in October 2005.

There is no date set yet, but we will let you know as soon we have it, so that you can make your plans. We are working hard to make the next conference worth the wait. If you liked Washington in October, you'll love it in the spring!

Partnerships in Law and Aging

Building Community Partnerships to Prevent Predatory Lending

By Mary S. Twomey

Her voice still quivering from the effects of a stroke that has left her paralyzed on one side, Mrs. Edith Smith¹ told the story of how she almost lost her home of over 40 years. "I just needed a little money to visit my sister in Texas," she said. "We're both getting up in years and she's been sick. I wanted to see her one more time." Needing money, Mrs. Smith was happy when a lender approached her saying it could help. "I just needed about \$500, and that's what I told them, but they kept saying I should take more. When the check came it was for \$10,000. I should never have talked to those people because that's when all of the trouble started." The loan used Mrs. Smith's home as collateral and charged an exorbitant interest rate. But worse, it carried a balloon payment clause that required it to be paid back in full in one-year. Mrs. Smith soon found herself barely able to pay the

Mary S. Twomey directs the Elder Abuse Prevention Program at the Institute of Aging in San Francisco.

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Future of Pro Bono Legal Services

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Cook County, Illinois by leveraging the skills of 900 attorneys and 200 paralegals from throughout Chicago's legal and corporate communities. Of the 3,508 cases CDEL handled in 2003, 2,780 (79 percent) of the clients were low-income elderly persons over age 60, referred to CDEL by the Chicago Department on Aging.

Whereas many free legal services providers hold clinics, have information desks at city hall, or host call-in referral service lines, CDEL protects and advances the rights of elderly clients through direct legal representation by expert attorneys. CDEL pro bono attorney volunteer opportunities range from brief legal counsel to complex litigation. CDEL attorneys even make house calls.

CDEL operates much like a citywide law firm, but the firm's lawyers are at satellite offices, so to speak. In fact, though CDEL does employ attorneys, rather than handle cases, these individuals perform as pro bono coordinators—overseeing the case management process from intake to closing. On rare occasions, when an emergency situation arises

and a CDEL volunteer attorney is not immediately available, a CDEL pro bono coordinator with a license to practice law in Illinois will perform triage on a case. However, with 1,100 volunteers, CDEL more often has volunteers waiting.

CDEL employs three full-time and two part-time pro bono coordinators to manage the provision of pro bono legal services to the elderly and disabled. During the course of the next year, each full-time pro bono coordinator will be responsible for the case management of approximately 900 cases and the cultivation of the attorneys who serve the clients.

CDEL's volunteer opportunities begin at the intake stage, after a client has been screened by staff for eligibility according to income, disability, and age. Paralegals play an important role in the CDEL case management process by handling the initial intake interviews to gather case-specific information and related documents. Prior to their becoming CDEL volunteers, extensive training is provided to paralegals. CDEL instituted a peer review program for new paralegals, whose interviewing skills and written reports are critiqued by experienced CDEL pro bono paralegals. The written summary of the intake interview is then sent to a CDEL volunteer attorney for a case determination. After the merits of a case have been affirmed, the case is then referred by a pro bono coordinator to a volunteer attorney in the appropriate practice area. For attorneys new to a practice area, CDEL assigns a mentor or, when necessary, the case is co-counseled. CDEL has 16 practice partners who provide communication throughout the CDEL volunteer network. The practice partners identify best practices, explore pertinent issues, and provide resources beneficial to the practice groups. Each of the partners are actively involved in recruitment strategies, attorney trainings, and community outreach.

Although Illinois does not require pro bono hours, the Chicago Bar Association aligns with the ABA Model Rule of Professional Conduct 6.1, which states: "Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year." In addition to the altruistic aspects, pro bono is just plain good business. Firms with strong pro bono policies enjoy a competitive edge in attracting legal talent. For young attorneys just entering the work force and seasoned attorneys at the height of their careers, a strong pro bono culture is seen as one of the defining elements in choosing a firm. CDEL is a major contributor to the pro bono culture of some of Chicago's most prestigious firms. At any given time, CDEL has approximately 500 cases in the hands of Chicago attorneys with another 200 within the case management process prior to the referral stage. CDEL's huge volunteer base, along with their success in expediting thousands of cases each year is a direct reflection on the strong case support they provide their pro bono attorneys. For exam-

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ple, CDEL is partnered with Navigant Consulting, Inc., whose financial professionals offer forensic accounting and expert consulting services for any case taken by a CDEL pro bono attorney. For sole practitioners or attorneys from smaller firms, CDEL provides everything from liability insurance to client meeting facilities. CDEL also has enjoyed great success with their Partnership for Development Program (PDP), a mentoring program that offers young attorneys diverse professional development through relationships with more than 200 senior attorneys from throughout Chicago. PDP participants have numerous networking opportunities throughout the year, including roundtable discussions, social events, and CLE-approved training seminars. Law firms are particularly appreciative for these opportunities, which provide accelerated professional development for their young associates.

CDEL's empathy for their elderly clientele is demonstrated through programs designed specifically for their most vulnerable clients. Through the Hospice Legal Assistance Program, CDEL collaborates with Professor Marcia Spira of Loyola University School of Social Work. Professor Spira, an authority on end-of-life issues and the elderly, provides resources and workshops for CDEL volunteers, which, in turn, help CDEL attorneys to more sensitively handle these cases.

The elderly are easy prey for predatory lenders and home repair con artists. Through the Predatory Lending Initiative, sponsored in part by an ABA Commission's Partnerships in Law and Aging Program, CDEL brought a diverse group of community and civic leaders and real estate practice legal experts together to form a Predatory Lending Task Force. Currently, the task force is drafting proposed regulatory changes that will be presented to the Illinois Department of Financial Regulation. The task force seeks to establish a database that could track the actions of predatory lenders, along with mandatory counseling and full disclosure for borrowers prior to signing on to high cost and predatory loans. CDEL attorneys have collectively donated more than 500 hours to this project.

CDEL's board of directors actively recruit volunteer attorneys and solicit corporate and firm funding, which accounts for approximately 70 percent of its budget. The balance of funding comes from the Chicago Department on Aging through the Title III Older Americans Act and from legal and private foundations.

Among the ten most populous states, an ABA study ranks Illinois last in funding for civil legal aid for the poor—approximately \$500,000 annually. CDEL's ability to leverage the skills of Chicago's finest lawyers for their low-income elderly clients has effectively established this organization as a model for the future provision of pro bono legal services.

Funding Opportunity

Partnerships in Law and Aging Program Offers Two Separate Funding Opportunities

Legal services and other organizations continue to struggle to meet the law-related needs of elders in their communities, particularly those whose legal problems are compounded by incapacity or communication, cultural, linguistic, or physical barriers, or failure to recognize the existence of a legal issue.

To assist such organizations, the ABA Commission on Law and Aging (<http://www.abanet.org/aging>) and the Albert and Elaine Borchard Foundation Center on Law and Aging (<http://www.borchardcenter.org>) created the Partnerships in Law and Aging Program.

Now in its seventh year, the Partnerships program has in years past awarded up to ten grants of \$7,500 each for the development of new, collaborative, community-based projects that enhance the legal awareness of older persons, improve elder access to the justice system, and serve as a catalyst for the development of permanent resources.

In 2005, the Partnerships program offers two separate funding opportunities:

- **Original Award:** Community Identified Need. We will award eight 12-month grants of \$7,500 to projects that meet program objectives and address an issue identified by applicant.
- **Special Initiative:** Legal Assistance to Elder Abuse Victims. We will award two 18-month grants of \$15,000 to projects that meet overall program objectives and that focus on an issue identified by the Partnerships in Law and Aging Program. This year, that issue is representing victims of elder abuse.

Applicants may apply under one or both categories, but must submit separate applications, including separate cover sheets and letters of commitment.

Applications must be postmarked on or before March 1, 2005. For more information and to download an application, visit the Web site of the ABA Commission on Law and Aging at <http://www.abanet.org/aging/2005PLAPannouncementwebsite.doc>.

Predatory Lending

Continued from page 1

monthly loan payments. When the balloon payment was explained to her she realized she was headed down the road to foreclosure. Luckily, one of her granddaughters called San Francisco Adult Protective Services (APS). APS intervened on Mrs. Smith's behalf and was able to stop the foreclosure and work out an equitable re-payment schedule. "Mrs. Smith is one of the lucky ones," said Larry Pickard, supervisor of APS, "she got to us before it was too late."

Mrs. Smith's case is one of thousands of predatory loans written in San Francisco every year. San Francisco's skyrocketing property values have been a particular attraction for mortgage fraud against seniors. A large percentage of elderly San Franciscans own their own homes. Equity in a home often represents the major financial investment for seniors. Research reveals that there are at least 5,000 homeowners who are currently sitting on predatory loans in San Francisco County. Thousands more are at risk.

What Is Predatory Lending?

The predatory lending business evolved out of the subprime lending industry. Trying to define a predatory loan is very difficult. One definition is that a predatory loan is a subprime loan where the borrower is being charged a higher interest rate, or charged a higher fee than that which they qualify for. High-pressure sales tactics and hidden costs also characterize predatory loans. The large scale of subprime and predatory lending seen today is relatively new. For many years, real estate lenders offered one product at one price. This was typically a fixed rate loan for households with what was considered "good" credit. Households that did not fit into that underwriting standard of "good credit" had to go to finance companies for loans. During the late seventies and early eighties, lenders began accepting the model that they could make loans to homeowners whose credit was less than perfect by charging a higher rate of interest. This model grew and eventually evolved into the subprime industry. It is now well-documented that this industry has had a phenomenal growth, reaching a high of \$200 billion annually, or roughly ten percent of the overall national market in 2002.

The Plan

To address this growing problem, a small group of community social and legal service providers met in 2002 to create a plan to fight predatory lending in San Francisco. Representatives from the San Francisco Bar Association,

Legal Assistance to the Elderly, the city's Department of Aging and Adult Services (which includes both APS and Senior Information and Referral), and the Institute on Aging's Consortium for Elder Abuse Prevention formed the nucleus of this workgroup. The group wrote a proposal to the ABA's Commission on Law and Aging and it was accepted for funding.

The proposal's objective was to increase the knowledge of seniors about predatory loans and other consumer frauds by conducting three legal clinics for seniors in areas of the city that are targeted for predatory lending. We proposed that attorneys would provide quality legal advice and one-on-one consultation at no charge. The other objectives were to increase the knowledge of social service professionals who work with the elderly regarding predatory lending by hosting a free training for them and to increase the awareness of predatory lending by mailing an educational brochure to 7,000 senior homeowners in targeted areas.

Educating and Advising Seniors

With the assistance of the Volunteer Legal Services Program, the San Francisco Bar's pro bono program, three senior legal clinics were organized and presented. Approximately 100 seniors attended these clinics where pro bono lawyers both presented on the topic of predatory lending and then assisted clients with individual consultations. The seniors were uniformly happy with the information they received about predatory lending and other legal issues.

General comments from the clinics include:

"clinic rated 5 out of 5 on a scale of 1 to 5 (5 being excellent)"

"information from predatory lending presentation was especially useful and relevant to senior community"

"information regarding consumer fraud, collection defense, wills, and powers of attorney most helpful and relevant to group"

Educating Social Service Providers

On September 26, 2003, Howard Levy, executive director of Legal Assistance to the Elderly, and Judy Hitchcock, a staff attorney, conducted an hour-long training on predatory lending aimed at educating social workers and others who work with seniors. The audience consisted of approximately 40 senior service professionals from a variety of non-profit and governmental agencies, including staff from Neighborhood Resource Centers, APS, and the Public Guardians office.

The training focused on preventing fraudulent and abusive lending practices, recognizing such practices when they occur, collecting loan documentation from clients prior to referral, and the services available to assist clients experiencing problems. A training manual, which included a check list for professionals, client brochures, a glossary of terms, and a brief referral guide was distributed to all participants.

Public Education

By far the most ambitious part of the workgroup's agenda was the mounting of a public awareness campaign on the subject of predatory lending. The workgroup's original plan was to write, print, and disseminate an educational brochure on the warning signs of predatory lending. As inquiries were made around the Bay Area into how other communities were handling the issue of public education on this topic, the group grew in size from our original four partners to include several other legal services programs (Asian Law Caucus, Bay Area Legal Aid, Palo Alto Legal Services Program), San Francisco's City Attorney and District Attorney's offices, the State Bar of California, two banks (Wells Fargo and WestAmerica), Fannie Mae, FDIC, and the Federal Reserve. In addition, the work group came to the attention of the city's Services and Programs Committee of the Department of Aging and Adult Services and was made an "official" committee of the city. The addition of these partners greatly enhanced the scope of the public awareness campaign.

While the commitment of the workgroup gained both depth and breadth, the creation of a final brochure for sending to seniors moved slowly. Finally, however, with the invaluable editing assistance of the group and design assistance by WestAmerica Bank, the brochure was completed. The translation into Spanish will be completed soon. In addition, the group purchased a list from a professional list company of 7,000 homeowners over the age of 60 in zip codes known to be targeted by predatory lenders.

Working with other city offices yielded additional resources. For example, the Treasurer's Office agreed to enclose a brochure in every tax bill (185,000 people in San Francisco will receive a tax bill this fall). The brochure gives the reader information on Senior and Disabled Services and also, with the work group's urging, includes a large section on predatory lending. In addition, the city's Senior Action Network has taken on the issue with their constituency of senior advocates. Also, the Institute on Aging's 4th Annual Rally for Elder Abuse Awareness is focusing on predatory lending as a topic. Victims of predatory loans, as well as the Chief of Police, the City Attorney, and the District Attorney will be speaking on this important issue at the rally.

Noted with Sadness

My first day working at Legal Aid, in April 1980, was a meeting of the elder law projects from around the state. Two of the then three managing attorneys at that meeting were Luther and Joan O'Sullivan—and I thought how much I liked them and how glad I was to be working with them. Over the years, Luther taught so many of us so much. We will miss him.

—Stephanie Edelstein, ABA Commission

January marked the passing of one of Maryland's great advocates for older persons, Luther Blackiston.

Luther most recently served as the director of law and technology for Maryland Legal Aid. He had been a member of Maryland Legal Aid since 1971, when he joined as a law clerk while attending the University of Maryland School of Law. From 1971 to 1975, he worked in the Prisoner's Assistance Unit; from 1975 to 1979 he worked in the Administrative Law Unit. For many years, Luther served as the managing attorney, and then chief attorney, of the Baltimore County, Maryland Senior Citizen's Law Project (part of the Legal Aid Bureau).

He was also the long-time chair of the Maryland State Bar Association Legal Services to the Elderly Committee, which was one of the first such entities in the country.

Conclusion

The grant from the ABA Commission on Law and Aging enabled the workgroup to form a nucleus of a larger group that has grown to explore the many ways of fighting predatory lending. By reaching out with pro bono attorneys to seniors and educating them about consumer fraud and predatory loans; by training professionals who work with seniors on the warning signs of bad loans; and by launching a public awareness campaign on predatory lending, the ABA grant is helping to safeguard San Francisco seniors against these insidious and damaging loans. The workgroup continues to carry out these tasks and is poised to venture into other ways to keep seniors safe in their homes.

Note

1. Not her real name.

Borchard Foundation Center on Law and Aging Invites Applications for 2005-2006 Fellowship

The **Borchard Fellowship in Law and Aging** affords one year for a law school graduate interested in, and perhaps already in the early stages of pursuing, an academic and/or professional career in law and aging, the opportunity to pursue his/her research and professional interests. During the fellowship period, the center's executive director and research associates stand ready to assist the fellow with the further development of his/her knowledge, skills, and contacts. Examples of recent activities by fellows include:

- Writing and publication of law review articles on law and aging issues;
- Writing/publication of state-specific, handbooks on legal issues affecting older persons;
- Teaching elder law and related courses at law schools where fellow resides;
- Development of elder law clinical program at a major public university law school;
- Development of a mediation component for a legal services program elder law hotline;
- Organizing and/or attending national conferences on law and aging issues;
- Providing supervised pro bono legal representation of older clients.

The fellowship is \$36,000 and is intended as a full-time position only. All fellowship projects/activities must be supervised by a licensed attorney or legal services organization. Fellows may live and work where they choose in the U.S., and must be U.S. citizens/residents.

The fellowship period runs from July 1 to June 30 each year, or for the calendar year beginning the month after the fellow's completion of a state bar examination. Applicants must submit an application form, a current curriculum vitae, a letter of support from the proposed supervisor, and two other letters of support. Applications should be sent to:

The Borchard Foundation Center on Law & Aging
c/o Henry & Ciccarello, LLC
1414 East 4500 South, Suite 2
Salt Lake City, Utah 84117

Applications must be post-marked by April 15, 2005. (selections made by May 15). For more information, see on the Web www.borchardcenter.org or contact Mary Jane Ciccarello, 801-272-3514, mjc@elderlawutah.com.

White House Conference on Aging

Mini-Conference on Legal Services Recommends Increased Availability, Specialized Training

By Nancy M. Coleman

The Mini-Conference on Legal Services was held in preparation for the 2005 White House Conference on Aging, and in conjunction with the Fifth Annual National Aging and Law Conference in Crystal City, Virginia, in October 2004. More than 35 elder law advocates from various perspectives in the law and aging field met to explore ways to ensure that the nation's aging population will be able to obtain legal representation in the years ahead. A national online survey, disseminated through the ABA Commission on Law and Aging's Elderlaw listserv provided additional input.

Robert Blancato, a member of the 2005 Policy Committee for the White House Conference on Aging (WHCoA), opened the mini-conference with an overview of the WHCoA process and expectations of the attendees at the session. This was followed by a summary of the on-line survey results and a review of the recommendations from the 1994 pre-WHCoA mini-conference on legal services and the WHCoA recommendations in the area of legal services.

Participants then compiled a listing of "environmental" changes since the last WHCoA that affect legal services to older persons. Among these changes were: the significant rise in the numbers of and needs of limited-English proficient elders; the increase in both the cultural diversity and the number of persons with disabilities; the rise of financial exploitation as an issue for elders; and the ease of access to credit, which has increased the frequency and severity of debt and consumer problems.

Other climactic changes included the fact that the private bar is more involved in legal services for elders, that legal services funding has remained static over the past decade; and that exponential advances in technology have opened new frontiers in the delivery of legal services to elders.

The group put forth the following recommendations:

- There is a growing need for the expansion of legal services for the baby boomers, as well as for those who are currently elderly. Realignment of public and private funded legal services programs and the expansion of other methods of providing legal services (hotlines, Web sites, discrete task, self-help,

dispute resolution, and clinical programs) underscore the critical need for coordination of these services with each other and with other elder rights and advocacy programs, as well as the private bar.

- The growth of the elderly population will necessitate more lawyers trained in elder law. To educate the next generation of lawyers about elder law, law school curricula should address ethical issues in aging such as client capacity, autonomy, and confidentiality, as well as substantive legal issues, and should promote an awareness of legal issues affecting older persons with low incomes.
- While most older persons have decision-making capacity, and while capacity should be presumed, there are some instances in which an individual's capacity to make decisions about legal, financial, health care, and other personal matters may be questionable. As a result, judges, lawyers, health providers, and others need reliable methods of assessing capacity. Experts, supported by adequate funding, should develop training materials on capacity assessment of older adults.

The White House Conference on Aging is scheduled for October 23-26, 2005. For more information, see on the Web <http://www.whcoa.gov>.

Alzheimer's Association 17th Annual Public Policy Forum

April 30-May 3, 2005, Washington, D.C.

The Alzheimer's Association invites you to its 17th Annual Public Policy Forum.

Not so long ago, Alzheimer's disease was considered by many to be a hopeless condition—a normal, inevitable part of aging. But thanks to advocates, scientists, donors and others, there has been tremendous progress in the prevention, diagnosis, and treatment of this disease.

The groundwork has been laid for major breakthroughs in the years ahead. But many in government, in the media, and in our nation haven't gotten that message. It is urgent that they do in order to realize the enormous progress within reach and to work toward a cure.

At this year's forum, attendees will receive the education, training, and tools needed for successful advocacy at the federal, state, and community levels. In particular, the goal is to work with Congress to increase federal funding for Alzheimer's research to \$1 billion annually and to improve the care and quality of life for those with Alzheimer's disease and their caregivers.

For more information about the forum, go to <http://www.alz.org/publicpolicyforum/05>.

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Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers

ABA Commission on Law and Aging and American Psychological Association

With the coming demographic avalanche as the Boomers reach their 60s and the over-80 population swells, lawyers face a growing challenge: older clients with problems in decision-making capacity.

While most older adults will not have impaired capacity, some will. Obvious dementias impair decision-making capacity—but what about older adults with an early stage of dementia or with mild central nervous system damage? Such clients may have subtle decisional problems and questionable judgments troubling to a lawyer.

Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers offers elder law attorneys, trusts and estates lawyers, family lawyers, and general practitioners a conceptual framework and a practical system for addressing problems of client capacity, in some cases with help from a clinician.

Lawyers are increasingly faced with capacity issues in a rising number of cases involving specific legal transactions and, in some instances, guardianship. Whether they intend to or not, lawyers are making judgments about capacity. Even the notion that “something about the client has changed” or a decision to refer a client for a formal professional evaluation represents a preliminary assessment of capacity.

This handbook represents a unique collaboration of lawyers from the ABA Commission and psychologists from the APA. It offers ideas for effective practices and makes suggestions for attorneys who wish to balance the competing goals of autonomy and protection as they confront the diffi-

cult challenges of working with older adults with diminished capacity.

Questions that this handbook answers include:

1. What are legal standards of diminished capacity?
2. What are clinical models of capacity?
3. What signs of diminished capacity should a lawyer be observing?
4. What mitigating factors should a lawyer take into account?
5. What legal elements should a lawyer consider?
6. What factors from ethical rules should a lawyer consider?
7. How might a lawyer categorize judgments about client capacity?
8. Should a lawyer use formal clinical assessment instruments?
9. What techniques can lawyers use to enhance client capacity?
10. What are the pros and cons of seeking an opinion of a clinician and how can a lawyer identify an appropriate clinician to make a capacity assessment?

Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers will be available at the end of February 2005. \$25. ISBN #1-59031-497-2/ABA PC# 4280025. To order, email the ABA Commission at abaaging@abanet.org or on the Web at www.abanet.org/aging.

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