

BAR ASSOCIATIONS IN FOCUS ON AGING AND THE LAW

State Bar Emeritus Rules Encourage *Pro Bono*

Across the nation, lawyers whose careers have ranged from solo to large firms, from corporate to government work, from the judiciary to the academic world, are contributing their time and talents to the provision of legal services to low-income and older persons in their communities. However, unlike lawyers who engage in traditional *pro bono*, retired lawyers may face some additional challenges, which state bar rules have been attempting to address.

In traditional *pro bono* representation, requests for legal assistance are screened by the local bar association or legal services program's *pro bono* coordinator. If the prospective client meets eligibility guidelines and the case is within the program's priorities, the matter is referred to a volunteer lawyer practicing in the community, who assumes full responsibility for the case from beginning to end. The volunteer utilizes his or her own office and support staff, and is covered by his or her own malpractice insurance.

Many retired lawyers are unable to participate in traditional *pro bono* activities because they no longer have an office or support staff, they have not maintained active bar status, or they have retired to a state in which they are not licensed. Recognizing this, several states have modified their practice rules to permit retired lawyers to

engage in *pro bono* activities under certain circumstances. Emeritus rules allow retirees who are not active members of the bars of those states to practice law, on condition that they only do *pro bono* work, usually under the auspices of an approved legal services program. States with *pro bono* emeritus rules include Arizona, California, Delaware, Florida, Georgia, Hawaii, Idaho, Montana, Oregon, South Carolina, Texas, Utah, and Washington. Emeritus rules are under consideration in several other states.

True emeritus rules are intended to promote *pro bono* practice by retired lawyers. Their goals are different from *pro hac vice* rules that permit lawyers to enter their appearance in

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Government Girls of World War II: Then and Now

A documentary entitled "Government Girls of World War II" tells the story of the nearly one million young women who came to live and work in Washington to help in the war mobilization effort of the early 1940s. The documentary was written and directed by Leslie Sewell, executive producer of The History Project, and narrated by veteran newswoman Cokie Roberts.

The one-hour documentary details the experiences of the young women who responded to the governments' recruitment efforts during the war-time years. While many came to

Washington out of a sense of patriotism, others came for the unprecedented opportunities for wage-earning employment, professional development, and financial independence. Their entry into the workforce served as a bellwether of the women's movement and altered the course of American culture.

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Washington includes commentary from noted scholars of the era, as well as interviews with several of the women who had entered the government workforce during those years. The women interviewed recount their jobs with a clear sense of accomplishment,

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single cases, in jurisdictions in which they are not licensed. Moreover, they are significantly more expansive than rules that simply waive mandatory dues or client security trust fund fees for lawyers who have retired from practice (see, e.g., Michigan, Nebraska, New York, or Wisconsin rules).

Emeritus rules vary somewhat from state to state. For example, California, Delaware, and Georgia limit eligibility to those who are licensed in the particular state, while Arizona, Florida, Idaho, South Carolina, and Texas rules apply also to lawyers licensed in other states. States may limit the program to lawyers who meet age and practice requirements; others extend it to all inactive lawyers, thereby allowing parents of young children or others who have taken a break from the active practice of law to volunteer their services for the public good. The District of Columbia has such a rule. Some states waive mandatory dues; others simply reduce the obligation. Almost all states restrict the volun-

teer's practice to work under the supervision of a licensed attorney in an approved legal services program.

The chart on the facing page provides basic information about *pro bono* emeritus rules as of this writing. It is a work in progress. Please let me know by email at sedelstein@staff.abanet.org of developments in your state or changes to rules in your state.

—Stephanie Edelstein
Associate Staff Director
ABA Commission on Law and Aging

BIFOCAL

BAR ASSOCIATIONS IN FOCUS ON AGING AND THE LAW
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ABA Commission Welcomes Interns, New Office Manager

Kathleen Bartley joined the ABA Commission's staff for the summer to work on a case law review of estate recovery practices for the Medicaid Estate Recovery Project, sponsored by AARP. She also has been working on legislative research to update an end-of-life care decision-making legislative review. In August, Kathy will enter her third year of law school at the Catholic University's Columbus School of Law in Washington. She is the secretary of the student Health Law Society. Kathy is a part-time practicing physicians' assistant and has worked in a geriatric practice. She lives in Annapolis with her husband and three sons.

Amy Smith joined the staff of the ABA Commission as a summer intern to work on a survey of states' procedures for voting in nursing homes and assisted living facilities. The survey results will be discussed in an upcoming article to be published in fall 2004. Amy is a 1999 graduate of Sweet Briar College and currently a rising third-year law student at Washington & Lee University School of Law in Lexington, Virginia. Amy is a member of the Community Legal Practice Center, a law clinic that serves the elderly and victims of domestic violence in the community. Prior to attending law school, Amy was a legal assistant at Arnold & Porter LLP and a volunteer at the Adult Day Health Center at IONA Senior Services, both in Washington.

The ABA Commission welcomes **Sonia Arce** as the new office manager. Sonia comes to the Commission after nine years as the administrative assistant of the ABA Public Services Division, Commission on Immigration. Sonia will be responsible for the day-to-day office management and for the budget and meeting planning. Sonia is bi-lingual in English and in Spanish.

Emeritus *Pro Bono* Practice Rules*

*Rules may be termed pro bono emeritus, active emeritus, inactive pro bono.

State	Minimum Age?	Years of Practice?	Licensed in State?	Dues Waived?	MCLE Waived?	Approved Pro Bono Work Required?
Arizona Supreme Court Rule 39 http://www.supreme.state.az.us/rules	No	10 of last 15	No	Yes	Yes	Yes
California Bar Rule Art. 1 §12 http://www.calbar.ca.gov	No	10; 3 of last 8 in Calif.	Yes	Yes	No; fees waived	Yes
Delaware Supreme Court Rule 69 http://courts.state.de.us/Rules/#supreme	Two levels: Retired - no Emeritus - 65	Yes	Yes	Yes	Yes	Yes
Florida Bar Rule 12-1 http://www.flabar.org	No	10 of last 15	No	Yes	No	Yes
Georgia Bar Rule 1-202 http://www.gabar.org	70	25	Yes	Yes	Yes	Yes
Idaho Bar Rule 223 http://www.state.id.us/isb	No	10 of last 15	No	Reduced	Yes	Yes
Montana Bar Rule Art. 1, §3 http://www.montanabar.org	No	10 of last 15	Yes	Yes	No; fees waived	Yes
Oregon Bar Rule 6.1 http://www.orbar.org	No	Two levels: Active <i>Pro Bono</i> - no Active Emeritus - 40	Yes	Reduced	Yes	Yes. APB - 40 hours service per year
South Carolina Supreme Court Rule 415 http://www.judicial.state.sc.us	No	No. Must have been in active practice within past 7 years	No	Yes	Yes	Yes
Texas Bar Rule Art.13 http://www.texasbar.com	No	5 of last 10	No	Yes	Yes	Yes
Utah Code Ch. 16 Bar Rules http://www.utahbar.org	No	No	Yes	Reduced	Yes	Yes
Virginia Supreme Court Rule 6:4-3 http://www.vsb.org	No	10 of last 15	Yes	Yes	No	Yes
Washington Court Rule 8(e) http://www.wsba.org	No	5 of last 10; 10 of 15 if out-of-state	No	Reduced	Yes, but a training course	Yes; one year status may be renewed

ABA Report Addresses Liability Issues in Consumer-Directed Personal Assistance Services

Over the last two decades, most states have developed some form of consumer-directed home care or personal assistance services (PAS), either under their regular Medicaid state plan or under Medicaid §1115 or 1915(c) waivers. With a great deal of variation, the consumer or a representative of the consumer takes on a greater authority and control over hiring and firing, payment, training, and supervision of workers.

The Cash & Counseling Demonstration, implemented in Arkansas, Florida, and New Jersey, represents the most methodical study of consumer-directed PAS to date. The program structure in these three states, as well as in many other related programs nationally, typically involves several players besides the consumer and a worker. The use of some form of fiscal intermediary to handle payroll tasks is common, as are various forms of counseling and support services through case managers, independent living centers, or other entity.

This division of responsibilities among multiple parties raises important questions about who is responsible when something goes wrong.

In June 2004, the ABA Commission published the findings of a year-long study of the liability issues that may arise in government-sponsored consumer-directed personal assistance programs (CDPAS). In analyzing these issues, the report focuses on the programs implemented in Arkansas, Florida, and New Jersey as part of the Cash and Counseling Demonstration, but also briefly addresses variations on the liability analysis for two well-established CDPAS programs—California's In-Home Supportive Services Program and New York's Consumer-Directed Personal Assistance Program.

The purpose of the report is twofold: first, to identify the circumstances in which negligence or other misconduct could result in liability and what persons or entities are likely to be liable; and second, to identify steps that can be taken to reduce exposure to such liability.

The project was prepared by **Charles P. Sabatino**, assistant director of the ABA Commission on Law and Aging, and **Sandra L. Hughes**, ABA Commission consultant, under a contract awarded to the Boston College Graduate School of Social Work by the U.S. Department of Health and Human Services/Assistant Secretary for Planning and Evaluation.

The report is available for \$18. Contact the ABA Commission via email at abaaging@abanet.org or phone (202) 662-8690.

Fact Sheets

Medicare Prescription Drug Discount Card

Enrollment in the first part of the new Medicare prescription drug benefit is now under way. Medicare beneficiaries are able to sign up for a new Medicare-approved prescription drug discount card. The cards offer savings for Medicare beneficiaries. For low-income beneficiaries there is an additional \$600 credit available. Low-income beneficiaries may also be eligible to receive benefits or discounts through state pharmacy assistance programs and pharmaceutical manufacturers, which when combined with the new Medicare benefits, can provide significant savings.

As a result of these recent changes in Medicare, **Leslie Fried, Medicare Advocacy Project Attorney and associate staff director of the ABA Commission on Law and Aging**, is developing a series of fact sheets for the Alzheimer's Association to provide up-to-date information on the new Medicare drug benefit.

The first fact sheet can be viewed at <http://www.alz.org/Resources/FactSheets/MedicareDrugFacts1.pdf>.

Medicare Savings Programs

Medicare is a federal health insurance program generally for people age 65 or older or under 65 and disabled who are receiving Social Security benefits. Some Medicare beneficiaries need financial assistance because they are unable to meet the costs of Medicare premiums, deductibles, and co-insurance payments. The Medicare Savings Programs help Medicare beneficiaries of modest means pay all or some of the Medicare cost sharing amounts. Unfortunately, many Medicare beneficiaries who may be eligible for these programs do not know about them and therefore do not benefit from them. Leslie Fried developed a fact sheet for the Alzheimer's Association to explain the eligibility and benefits of the Medicare Savings Programs.

The fact sheet can be viewed at http://www.alz.org/Resources/FactSheets/Medicare_Savings_Programs.pdf.

Elder Law Section of the Alabama State Bar

By Jo Alison Taylor, Esq.

The Alabama State Bar (ASB) is a mandatory bar. The twenty-one specialty sections historically operated independently of the ASB, though with some assistance and much encouragement. In recent months, an ASB Task Force on Section Governance reviewed the situation and developed guidelines to establish operational consistency across sections and provide a more coherent support system.

The Elder Law Section of the ASB was established in 1997 as the concept of “elder law” as a discrete area of practice was spreading across the country. Much of the impetus came from the handful of elder law specialists practicing in Alabama at the time, but many traditional estate planners also recognized the need for a section dealing with more general elder law issues.

Section officers include a president or chair, vice-president/president elect, secretary, and treasurer. Two offices, other than president, can be and usually are combined. Officers may serve in the same office for two years, but not more than two.

While the Elder Law Section is still one of the smaller sections, we have grown to more than 100 dues-paid members, with a mailing list of over 150. The section’s mission is:

To develop, promote, and enhance the quality of legal services for the elderly in Alabama. By joining this section, attorneys have an opportunity to identify a network of practicing professionals interested in serving the needs of the elderly, and to create a forum for communicating and timely dissemination and exchange of updates and changes in substantive law, policy interpretations of administrative agencies, and areas of special interest.

The section’s primary efforts to date have been directed toward professional and community education. Efforts to affect policy have been indirect and through individuals; although, as the section has grown it is now in a position to take more direct action as a group.

Progress in increasing section membership has been hampered by the fact that many of the members, including

the officers, are either new lawyers or experienced lawyers new to elder law, and thus are busy building their practices in this relatively new area. The section anticipates more recruiting assistance from the ASB as some of the proposed governance changes are implemented. The section distributes a quarterly newsletter, which is the primary method of communication between meetings. The section also has a listserv.

Alabama is a largely rural state and most attorneys must be generalists. Lawyers located in large metropolitan areas, on the other hand, face heavy competition, with two accredited and two non-accredited law schools pouring out graduates, plus graduates of out-of-state schools. The section’s membership is composed entirely of practicing attorneys and is an interesting mix of practice types. Although still a minority, there is a growing number of large-estate planners who are increasingly getting queries about Medicaid and other issues previously associated with the less affluent. All twelve of the state’s Title III attorneys (Area Agency on Aging legal providers) are members. The largest group of members are lawyers whose practices include estate planning and other general elder law issues, but with a large component being Medicaid planning and advice.

Despite the diverse economic situations of our client bases and resulting disparate views on some issues, section members share concerns about substitute decision-making, especially issues related to end-of-life and disability planning.

Alabama has historically provided little consumer protection and consumer problem issues are more and more prevalent. Thus, as with Medicaid, outright scams and marginally “legal” financial manipulation and marketing are becoming less poverty-law issues and more elder victimization and elder rights issues, and members share concerns about those issues as well.

Changes come slowly in Alabama, and reluctance to change is exacerbated by massive budget problems. Nonetheless, the section and its members are having an impact. The section’s quarterly meetings always include a presentation on substantive issues. In addition, the Friday afternoon mini-seminars, usually preceded by a brown-bag luncheon and a short business meeting, consistently receive

Jo Alison Taylor, Esq. is the chair of the Elder Law Section of the Alabama State Bar.

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Bar Profile: Elder Law Section of the Alabama State Bar

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positive evaluations by those attending. The meeting locations alternate between sites in the north central and south central parts of the state, with the July meeting held at the Annual State Bar Convention on the Gulf Coast.

The section has a good relationship with the state's two accredited law schools. Speakers for both schools' elder law seminars are usually members. Commercial seminars are dominated by section members, as well. Each year, the section co-sponsors and provides speakers for the annual day-long Elder Law Seminar presented by the Alabama Bar Institute for Continuing Legal Education, held at the University of Alabama Law School.

Through presentations and interactions the section had has a major impact on the quality of legal services provided to the clients of members. While continuing to educate ourselves, we are expanding our efforts outward. Members have published articles in the *Alabama Bar Journal* and other publications. Members are frequent speakers at community gatherings around the state and for statewide conventions and seminars held by other professions. Through contacts with physicians who have presented seminars on end-of-life issues at section meetings, we hope to bridge the barriers that too often exist between the medical and legal communities. To that end, the section is enjoying some success. Members throughout the state were active in a united educational effort in 2001 by the medical, hospital, and bar associations on end-of-life issues and in the revision of the Alabama Advance Health Care Directive.

The section is currently developing an agenda that is purposeful, but limited enough so that our small but talented membership can affect legislation and budget prioritization. We seek to become an entity that speaks out with authority on legal issues affecting the elderly in our state. In that connection we are currently drafting a section comment on proposed administrative rule changes affecting Medicaid.

Government Girls of World War II

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whether they worked in clerical service or in counter-intelligence. One interviewee described her work as a "counterfeit ring buster," whose job was to examine government ration coupons to detect the fakes. There are also the more humanizing remembrances—of cramped living accommodations in a city unprepared to accommodate the influx of so many young women, of food rationing, and of the invaluable anecdotes that add realism and texture to our history, such as buying "paper" shoes because leather was not available.

For more information about the "Government Girls of World War II" documentary, contact Leslie Sewell via email at info@governmentgirls.com.

Negotiation of Gender Roles and Care Outcomes

For many of the women who entered the public service workforce during the 1930s and 1940s, maintaining their positions or attaining promotion required a higher level of commitment. In many cases, choosing a career came at the expense of more traditional roles for women at that time, such as that of wife and mother.

In a study initiated by **ABA Commissioner Pamela B. Teaster, Assistant Professor in the Graduate Center for Gerontology and Department of Health Behavior, University of Kentucky**, this commitment to career resulted in protracted "social" capital. Professor Teaster hypothesizes that many of these career women now lack the traditional familial support and other networks that buoy so many in later stages of life and that these women are now at risk of abandonment, self-neglect, and morbidity.

The study proposes to examine the theory of cumulative disadvantage among this particular cohort of women. Tentatively entitled "Government Girls: Negotiation of Gender Roles and Care Outcomes," the study will include informed interview and analysis of age and ageism, societal roles, gender bias and marginalization, social support, and care giving needs and demands.

To date, Professor Teaster and her colleague, Professor John F. Watkins, also of the Graduate Center for Gerontology and Department of Health Behavior, University of Kentucky, have identified and interviewed five women who fit their original study criteria. In addition, **ABA Commission associate staff directors Erica Wood and Naomi Karp** have helped to publicize the project and have attended the interviews.

The study is in its infancy and funding for the project is actively being sought. For more information, please contact Professor Teaster via email at pteaster@uky.edu.

Guardian Monitoring and Accountability

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toward the concept of “portability,” meaning that a guardianship established in one state could be transferred to another without unnecessary relitigation. The standards also encourage judges and courts to communicate about specific guardianship cases that cross state lines.

A. Frank Johns, a lawyer representing the National Academy of Elder Law Attorneys, testified on these same issues and provided three recommendations to improve the guardianship process. The recommendations called for funding for three major initiatives: 1) to develop a primary national guardianship database; 2) to investigate and study ways to implement accountability and monitoring in all states; and 3) to fund court models that educate and train judges, lawyers, and other professionals in the guardianship process. Other speakers included Debbie Armstrong, deputy director of the New Mexico State Agency on Aging; and Robert L. Aldridge, and elder law attorney from Boise, Idaho, both of whom testified on successful guardianship processes in their states. For more information, see on the Web <http://aging.senate.gov/index.cfm?Fuseaction=Hearings.Detail&HearingID=52>.

Brochure Helps Family Members Understand the Relationship Between Lawyer and Elderly Client

Your parent or other elder relative is getting legal advice. Shouldn't you be included? After all, you might be very involved in helping him or her with important matters. Perhaps you even arranged this appointment.

There are several reasons why a lawyer needs to meet with an elderly client alone for at least part of the case evaluation process. While family involvement is important, to understand the way legal services are provided to elder or disabled clients, it may help to understand the “Four C's” of elder law ethics that lawyers are required to follow.

The ABA Commission has published a consumer-friendly brochure that explains the “Four C's” of elder law ethics—client identification, conflicts of interest, confidentiality, and competency. The brochure can be viewed and downloaded for free from the ABA Commission's Web site at <http://www.abanet.org/aging/lawyerrelationship.pdf>.

Individual brochures can also be purchased for \$1 each or \$20 for an order of 50. An order form is included at the end of the online brochure.

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Guardian Monitoring and Accountability Are Focus of Senate Hearing

The U.S. Senate Special Committee on Aging on July 22 convened a hearing to focus on the monitoring and accountability of court appointed guardians responsible for the care and financial management of incapacitated adults.

In conjunction, the GAO (Government Accountability Office) released a report on guardianship programs nationwide. Barbara Bovbjerg, director of the GAO's Office of Education, Workforce and Income Security Issues, highlighted the three main topics addressed in the report, including:

- What state courts do to ensure that guardians fulfill their responsibility;
- What exemplary guardianship programs look like; and
- How state courts and federal agencies work together to protect incapacitated people.

Nancy M. Coleman, director of the ABA Commission on Law and Aging, was among the expert panel called to testify. Speaking on behalf of the American Bar Association, Ms. Coleman addressed her remarks to the three areas of focus in the GAO report, specifically:

- state laws regarding accountability and monitoring;
- coordination between state courts and federal representative payment programs; and
- inter-jurisdictional guardianship issues.

In her remarks, Ms. Coleman said that during the last 15 years all states have revised their adult guardianship laws and almost half have adopted comprehensive new codes includ-

ing stronger provisions for accountability and monitoring. She added that while the GAO study found that most state laws require guardians to report on the personal status of incapacitated persons and provide an accounting of the individuals' finances, the frequency, review requirements, and enforcement procedures vary dramatically. She noted that many courts across the country have begun to initiate model practices and procedures to improve and ensure effective guardianship monitoring. Some of these practices include the development of guardian training handbooks and "guardianship plans" to guide guardian activity; guardian certification requirements; and sanctions when guardians violate their fiduciary duty.

Ms. Coleman spoke about the similarities between the state court guardianship system and the federal Social Security Representative Payment program. She noted the two often serve overlapping populations. For this reason, Ms. Coleman asserted that increased coordination between the courts and the federal Representative Payment program would offer significant benefits for each in terms of strengthened monitoring and accountability.

Finally, Ms. Coleman addressed complications that arise when guardianship of an adult involves more than one state. She noted the National College of Probate Judges' efforts to study interstate guardianships and to explore ways to encourage cooperation between courts with guardianship jurisdiction. The committee developed five standards that aim

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