Contents

Preface xv

Introduction xix

1 Myths and Stereotypes About Aging 1
   Introduction 1
       What Does It Mean to Be “Old”? 1
       The Changes of Aging 2
   Society’s Attitudes About Aging 3
       The Pervasiveness of Ageism 3
   Fear of Aging 4
   Stereotypes and the Effect on Elders 5
       The Risk of Not Being Heard 5
       The Risk of Social and Emotional Needs Being
           Overseen 7
       Raising Our Own Awareness 8
   Overcoming Assumptions About Elders 9
       The Basis of Assumptions About Aging Persons 9
       Family Experiences with Aging Relatives 9
       The Effect of Broadening Our Experience of Older
           Persons 10
       Examining Our Feelings About Our Own Aging 10
   Medical Stereotyping of Elders 11
       Illustration: Richard’s Case 12
       Addressing Medical Stereotyping 14
       Illustration: Jeanine’s Case 14
   Conclusion 15
2 Challenges in Working with Elders

Introduction 17
Background 17

Negative Aspects of Working with Aging Clients 19
Family Dynamics in Working with Elders 21
Helpful Attitudes You Can Adopt 22

The Professional’s Role: Remembering Quality of Life for Elders 23
What Elders Need 24
Recognizing What Is Different About Elders 25
Watch for Vulnerabilities 25
The Risk of Reliance on Elders’ Self-Reported Information 26

Confidentiality 27
Physical Limitations 29

Creating Impairments to Mimic Real Life 29
Accommodating the Elder’s Stamina Limitations 30

Mental Capacity Limitations 31
Legal Considerations of Mental Capacity 32
Neuropsychological Testing for Capacity 33
The “Gray Zone” 33
The Value of Objective Information 36
Accommodation for Diminished Mental Capacity 37

How Do You Decide Whether an Impaired Client Can Participate in Legal Proceedings? 38
Accommodating Diminished Capacity by Limiting Participation 39

Other Questions Beyond Objective Data, Social Ability, and Stamina 39

General Mobility Issues 41
Working with Physical Impairments 42
Hearing Loss 42
Visual Impairment 43
Accommodating Limited Activity Tolerance 45
Travel Considerations 46
Conclusion 46

3 Common Elder-Specific Issues 47
Introduction 47
Life Events 47
Aging and Its Problem Areas 48
Issues Surrounding the Cost of Caregiving 50
Diminished Capacity Issues 51
Complexities of the Competency Issue 52
How Can a Lawyer or Other Professional Tell If a Client Has Diminished Capacity? 52
What Is the Extent of a Cognitively Impaired Elder’s Rights? 57
Illustration: Doing Exactly as the Impaired Client Asks 57
Illustration: The Right to a Dangerous Decision—Marina’s Mother Living Alone in the Family Home 58
The Driving Dilemma: Should Lawyers Get Involved
When a Client Is an Unsafe Driver 60
How We Can Help 62
Tips for the Conversation About Driving 64
Dementia and Its Effect on Financial Capacity 65
Financial Capacity Is Diminished Early with Dementia 65
Financial Services Professionals and Elders with Cognitive Impairment 66
Common Financial Transaction Issues 70
Lack of Clear Policies Specific to Elders 71
The Effect of Financial Elder Abuse 71
Illustration of Diminished Capacity: Harold’s Dispute 73
Conclusion 76
4 Communication with Elders

Introduction 79
“The Handshake Generation” 80
Attitudes About Finances 80
The Resistant Spender 80
The Careless Big Spender 81
Secrecy About Finances 82
The Difficult Elder, Resistance, and Control 83
Fear and Resistance 84
Communication About Giving Up Control 84
Communicating with Depressed Elders 84
Common Triggers of Resistance 86
Confidentiality and Elder Abuse 88
Summary: Top Ten Pointers for Successful Communication with Elders 89
1. Embrace a Client’s Appreciation When You Can 90
2. Measure Your Pace 90
3. Consider Hearing Loss 90
4. Don’t Mention the Lack of Devices the Elder Might Need but Doesn’t or Won’t Use 91
5. Take Bathroom Breaks Often 91
6. Ask for Feedback Frequently 91
7. Invite the Elder to Express His or Her Thoughts 92
8. Consider Your Environment and the Client’s Physical Limitations 92
9. Remember Eye Contact 92
10. Use Touch Judiciously 93
Conclusion 93

5 Elders and Family Conflicts

Introduction 95
Family Law Provides a Model for Collaborative Practice 95
The Lawyer’s Role 96
Antecedents of Conflict in Families 97
Focus on What Is Best for the Elder 98
Consider a Family's History 98
Alternatives to Engagement in Family Disputes About Elders 101
Skills You Need: Interviewing a Prospective Client About a Family-Related Dispute 103
Listening 104
Reiterating and Adding Your Impressions 104
Asking Probing Questions 104
Ask About Others Who Have a Different Perspective 105
If an Elder’s Competency Is an Issue, Ask About Medical Information 105
Sibling Issues 106
Shared Responsibility on Legal Documents 106
Caregiving Issues 107
How to Pay the Cost of Care 107
What Is the Cost of Long-Term Care? 108
How Lawyers Can Help 109
How to Handle an Elder’s Escalating Needs 110
Unequal Sharing of Responsibility for Parents 111
Common Issues About the Right to Make Decisions 111
Who Should Handle Finances? 111
When Should the Successor Trustee Assume Responsibility? 112
Disagreements About Competency of Aging Parents 113
Undue Influence 113
Taking Away the Car Keys 115
Financial Abuse Accusations in Families 116
Illustration: Daniel’s Father 117
End-of-Life Issues 118
Prevention 119
Hoarding and Other Intractable Problems 119
Hoarding 119
Mental Health Issues 120
Contents

Substance Abuse 121
General Perspectives in Working with Adult Families 122
Conclusion 123

6
Using Mediation for Family Disputes About Elders 125
Introduction 125
What Is Mediation? 126
Family Involvement 127
Family Battleground Issues 128
The Impact of Longevity 129
Financial Pressure 130
Exercising Professional Leadership 132
What Makes a Good Mediator for Disputes Involving Elders? 133
Basic Training 134
Critical Skills 134
Personal Qualities 136
Willingness to Confront the Heart of Conflict 136
Working with Two Mediators 138
The Benefits of Having Two Mediators 138
How a Mental Health Professional Can Help a Mediation 140
Mental Health Issues in Working with Elders and Their Families 140
The Role of Lawyers and Other Professionals Working with Difficult Families 142
Estates and Trusts: Other Common Battleground Issues 142
Finding a Mediator for Elder Disputes 144
Conclusion 145

Resources 147
Publications 147
Websites 148
General Information 148
Contents

Safe Driving 148
Aging Parents and Adult Children 148
To Find a Mediator 149