INTRODUCTION

RICK LAW’S STORY

How and Why I Became an Elder Law Attorney

It all started with a phone call to my law office in the year 2000. I was 50 years old and my practice was primarily focused on taxation, real estate investments, and traditional estate planning. I received a call from my dear friend, Luise. With panic in her voice she cried: “Bob has just been diagnosed with Alzheimer’s. What are we going to do? Am I going to lose my home? Are we going to lose everything?”

I had to respond, “Luise, I have no idea. I have never been asked those questions before. I don’t know, but I will find the answers for you.” Unknowingly, I had been launched on a new life path that would lead me to the creation of a new law firm. The firm is known as Law Elderlaw, LLP, which has a regional presence in the Chicago metropolitan area.

The caller, Luise, was a woman in her 60s whose husband, Bob, was 72 years old. Due to receiving a dreaded diagnosis, they had suddenly lost a comfortable retirement. They also lost their hope of a long and fulfilling retirement marriage. Even though only one of them had been
diagnosed with Alzheimer’s disease, they both became victims. Both husband and wife were smashed by the wrecking ball of dementia.

Bob was a former amateur chess champion, so he was well aware that he was mentally declining. He was also a tough guy. He had fought in the Korean War, walked the beat as a cop, and had survived everything up until his diagnosis. Now he felt helpless and dreaded sliding into the dark abyss of his doctor’s diagnosis of Alzheimer’s disease. Luise was panicked with the fear of losing her husband, her home and her hard-earned financial security. Would she be able to continue to live in the same neighborhood? They were both scared, yet they were walled apart from each other by their own individual fears.

Bob and Luise are typical of millions of aging American citizens. Most of them have lived frugally, played by the rules, and planned on enjoying a modest and pleasant retirement. But now, after the diagnosis of a long-term disability, they’re overwhelmed by the staggering emotional, physical, and financial cost. They fear the diagnosis may destroy their marriage, finances, and dreams.

Luise had many questions:

1. What was going to happen to Bob?
2. How was he going to get the health care that he needed?
3. How are we going to plan to help both me and Bob live through the years that may go by between the time of his diagnosis and his eventual death?
4. How will we protect the home so that I can continue to live in the community, despite Bob’s multiyear care needs?
5. Will my husband’s health-care needs totally impoverish me while stealing his health and life?
6. Prior to Bob’s eventual death, how are we going to access, find, and obtain quality long-term care?
7. What would be left for me to live on after the disease has run its course?

When Luise initially called me, my mind had immediately searched through my mental list of items I had in my legal professional tool kit. Here is what I found that I was prepared to provide an estate-planning client:

1. Reduce and eliminate estate tax.
2. Protect the survivor spouse while protecting the estate tax credit for residuary beneficiaries.
3. Avoid probate and keep administrative costs low.
4. Avoid any problems with distribution at the death of the client.

Looking at the questions that Luise and Bob’s situation presented, they wanted nontraditional solutions for which my training was inadequate.

I have learned to distinguish between those who desire traditional estate planning versus those who desire or need eldercare estate planning or longevity planning. The traditional estate plan is triggered into action by the death of an individual. An eldercare estate plan, while being fashioned in accordance with traditional estate plan concepts, is initially triggered into implementation by a long-term illness diagnosis.

The “eldercare journey” is a concept and accompanying graphic (below) that I created in 2007 to make it easier for clients to understand the distinctive focus of eldercare estate planning. In its simplest form, it looks at the fact that a senior citizen often starts out as a healthy, vigorous senior whose only health-care needs are for acute care. Obviously, anyone can die a sudden death anywhere along life’s trajectory, but if
the person remains alive and well during the healthy vigorous senior stage, that person may eventually become a declining senior who has memory or mobility issues. Declining seniors with memory or mobility issues have to change health-care needs. They move from having an acute illness to having a long-term health-care condition. This causes them to start paying out-of-pocket for numerous health-care expenses.

Almost all health-care insurance policies and Medicare are designed to pay for acute-care illness and injury and do not pay for long-term-care expenses. Most declining seniors (90 percent) survive to become what we call a “fragile senior” who needs full-time nursing home care. Of course, death eventually comes to us all. At that point in time, there may very well be estate administration and the triggering of the traditional portion of the estate plan and the fulfillment of that plan in avoiding probate, avoiding problems relative to distribution of assets through heirs, and, of course, protecting the survivor and any other vulnerable loved ones.

Over the years, Law Elderlaw has developed a complementary practice track by comparison to that of the Peck Bloom Law Firm. Our colleagues and good friends at Peck Bloom in downtown Chicago are focused on contested litigation of estates, elder abuse, special-needs trusts, and high-net-worth estate planning.

Law Elderlaw serves people who need crisis planning, such as those who

1. have been residing in a long-term-care facility, such as a nursing home or assisted/supported living facility;
2. have an immediate need to go to a long-term care facility or assisted/supported living facility;
3. have been living at home alone or with relatives and are paying for full-time care;
4. have been living at home or with a child and the child has been providing a majority of the care; or
5. wish to continue to live at home and need to access governmental benefits to pay for care from the community.

Another area of focus of Law Elderlaw has been veterans’ benefits related to wartime veterans who are entitled to receive a special monthly pension after they turn 65 and are paying a substantial portion of their income for unreimbursed medical expenses.
A primary focus of our clients is that they are dealing with a long-term care condition and/or diagnosis of illnesses that have a multiple-year trajectory, such as dementia.

Since beginning the firm, it has grown from being a law practice that was focused around me, Rick L. Law, with an initial staff of three to today’s practice wherein I share the partnership with my daughter, attorney Diana Law. The law firm now includes five attorneys and an overall professional staff, including attorneys as well as our support colleagues, of 20 individuals. Diana was recently chosen by the governor of the state of Illinois to become the Kane County Public Guardian and Administrator. The Kane County Public Guardian and Administrator is typically a private attorney who has become certified to provide guardianship services in addition to their active services in the practice of law. She has been recognized for excellence at both the county and state levels.

**Kerry Peck’s Story**

*How I Became the Warrior Lawyer of Elder Law in Cook County and Illinois*

My role as an advocate of older adults, in large measure, stems from my exposure to watching older adults being exploited. Older adults, who are really the crux of our society in the context of wisdom, experience, and viability, are unfortunately the frequent victims of unscrupulous individuals who financially exploit them due to their vulnerability. Often that vulnerability relates to cognitive impairments. It might be Alzheimer’s disease or it might be a cognitive impairment as a result of a different type of illness, perhaps vascular dementia. I became enamored with the notion of representing and defending older adults when I became aware many decades ago that older adults were constantly being victimized by money grabs, being taken advantage of by their children, and being abused by contractors and, frequently, by those providing them with care. Older adults need a strong, zealous advocate to defend them, and I am happy to wear that hat.

As an elder law attorney who focuses primarily on the litigation of trust and estate cases, I frequently spend many hours in the courthouse—Cook County Courthouse, Lake County Courthouse, Kane County Courthouse—representing older adults or representing family members.
in the context of trust and estate disputes. Those would include contested guardianships, wills, and trusts, as well as citation proceedings in an effort to bring back funds into an estate that may have been stolen from it. I’m frequently involved in continuing education programs and am a frequent presenter to various organizations: Illinois Institute of Continuing Legal Education, the Chicago Bar, the Illinois State Bar, National Academy of Elder Law Attorneys (NAELA), and the American Bar Association. My week typically involves a lot of courtroom time, time meeting with clients regarding their cases, and time meeting with other lawyers in my firm to develop litigation strategy.

In the context of probate and estate litigation, Peck Bloom Law Firm has probably been involved in at least a dozen litigation matters that have gone to the appellate court and several that have gone to the Supreme Court during the course of my practice. Appellate work, in conjunction with trust and estate litigation, is very interesting. We have an opportunity to make a major impact in terms of interpretation of the law and expansion of the law.

I became involved in drafting legislation in the probate arena very early on in my career. I joined the Chicago Bar Association Probate Practice Committee and was promptly assigned to a subcommittee addressing the terminology of illegitimates on whether, for example, siblings would be half brothers or illegitimates, and ultimately that legislation changed the manner in which half siblings now inherit under the law.

Seniors are often vulnerable and need advocates. I have been actively involved in lobbying and the drafting of legislation to protect seniors. My endeavors have included being engaged by the City of Chicago Department of Aging as a Special Assistant Corporation Counsel to draft amendments to the Illinois Elder Abuse and Neglect Act. I was engaged to lobby the legislature and testify before the legislative body hearings in Springfield, and did so to the goal of passing amendments, which were major changes to the Elder Abuse and Neglect Act. Those included the self-neglect amendment. During my presidency of the Chicago Bar Association, we proposed changing the power of attorney for property requirements in which we required that the witnesses to the document acknowledge under oath that an individual is of sound mind and memory. I had previously seen circumstances in which a
power of attorney for property was used to exploit individuals when it was not necessary to have two witnesses plus a notary legislation, and so we shepherded power of attorney reform legislation through the Illinois House and the Senate and obtained the governor’s signature. Now two witnesses are required to acknowledge that the individual is of sound mind and memory and not under duress. I have been involved in the passage of legislation at the federal level through the NAELA. I have been involved in many attempts to better our legislative books to protect older adults, and will continue to do so with a strong advocacy fashion.

My involvement in the political process includes taking two groups of NAELA lawyers to Washington and meeting with members of the president’s staff, as well as members of Congress and members of the Senate, as we advocate for adults. I’ve had an opportunity to testify before the Illinois House and the Illinois Senate. I testified before the Illinois House as a witness on a special task force against elder abuse. I was appointed many years ago by Governor Ryan to his Elder Abuse Task Force. I currently chair the Cook County State’s Attorney Anita Alvarez’s task force on elder abuse, and I’ve had an opportunity to testify before the Chicago City Council, Health Committee, and Finance Committee on power of attorney–related matters. I’ve been called upon in many instances to assist the passage of legislation, and I’ve been called upon by elected officials to advise them as to viability of legislation, which I’m honored to say is an important role since our elected officials have to rely on other individuals from time to time.

As we move forward, I think the typical practitioner is going to be overrun with questions from clients and from family members of clients regarding the sudden onset, or even the slow onset, of Alzheimer’s disease in the lives of older adults. Today we are seeing more and more circumstances in which families are calling and saying, “Mom’s cognitive impairment has now impacted her ability to manage her affairs. She has done no advanced planning, has no powers of attorney in place, and has no successor trustee and revocable living trust in place. What’s the remedy for solving this problem?” Of course, in that case, it’s guardianship.

Individuals clearly are living far longer than anybody anticipated, and as a result, the projections on cognitively impaired individuals are a very large number. I think that the average practitioner is going to
encounter these circumstances with a cognitively impaired client on a regular basis.

The Peck Bloom Law Firm focuses on litigation and estate/tax planning. On the litigation side of the firm, we litigate trust and estate matters, primarily, as well as contested guardianships and wills, financial exploitation cases, trust construction cases, and the like. We have seven lawyers devoted to that side of our practice. I lead the law firm as a managing member, and I lead the litigation side of the law firm. My son, Brandon Peck, is also on the litigation side. He practices in the areas of trust litigation, probate litigation, fiduciary defense litigation, elder law, and estate administration, with an emphasis on contested trusts and estates.

Brandon has been an active member of the Chicago Bar Association’s Young Lawyer’s Section, on which he currently serves as a director. Previously, he served as cochair of its Estate Planning Committee from 2011 to 2012. Brandon is also a junior member of the Alzheimer’s Association’s Greater Illinois Chapter Junior Board.

We have three lawyers that are devoted to the estate/tax planning, asset protection, and transactional side of our law firm. Asset-protection planning relates in large measure to representations of individuals that may be exposed to continuing liability and relates from matters as simple as creating serial limited liability companies to asset protection, domestic trust protection, and offshore trust protection. The transactional work that those three lawyers do generally arises out of the estate litigation matters, such as the sale of real estate in an estate administration case. We do estate administration and trust administration as well.