Effective Counseling of Older Clients

The Attorney-Client Relationship

Commission on Legal Problems of the Elderly/ABA Legal Counsel for the Elderly, Inc.
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The opinions expressed herein are those of the authors and should not be construed as representing the policy or position of Legal Counsel for the Elderly, the American Association of Retired Persons, or the American Bar Association. No official endorsement of these materials should be inferred.

Commission on Legal Problems of the Elderly, American Bar Association
Alexander D. Forger, Chair

The mission of the ABA Commission on Legal Problems of the Elderly is to examine law-related concerns of older persons. Since 1978 the Commission has encouraged legal services for the elderly, particularly through involvement of the private bar.

Legal Counsel for the Elderly, Inc.

Sponsored by American Association of Retired Persons, LCE is a national support center specializing in the delivery of legal services to older persons. A nonprofit organization, LCE’s programs focus on people who are poor and disabled while providing some services to all older people.

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I. INTRODUCTION

As we move toward the twenty-first century, attorneys increasingly face a new challenge--more older clients. While there are now some 31 million persons 65 years of age and older in the nation, by 2030 there will be about 66 million older Americans, two and one-half times their number in 1980, representing 21.8 percent of the population. Moreover, the number of "old old," aged 85-plus, is soaring.

Although older Americans often have the same types of legal problems as the rest of the population--such as landlord-tenant disputes and consumer problems--they also face a vast array of legal issues woven through a maze of federal, state, and local laws, regulations, and programs. They commonly face problems--often several at once--in Social Security, Medicare, Medicaid, other public benefits, private health insurance, public and private pensions, long term care, guardianship, advance health care and financial planning, wills and probate, and age discrimination.

To address these problems and meet the needs of the growing population of older persons, the emergent field of "elder law" has burgeoned within the past several years. In the early eighties, only a handful of private attorneys centered their practice on serving older clients. In 1987 the National Academy of Elder Law Attorneys was established, and today has over 2,500 members throughout the country. Moreover, 11 state bar associations have elder law sections and 25 have elder law committees. Many hold continuing legal education sessions, and publish manuals and journals on law and aging issues.

But more fundamental than a knowledge of the changing issues, laws, and regulations is the attorney's ability to communicate clearly and sensitively with older clients. That is the focus of this booklet. It aims to enhance the attorney—older client relationship, offering perspectives on aging, practical tips, and interpersonal skills. In 1990 one out of every nine Americans was over the age of 65. The legal profession should recognize its obligation to serve this ever growing portion of our population in the most effective and informed manner.

The booklet grew out of a 1983 publication by the American Bar Association (ABA) Commission on Legal Problems of the Elderly, entitled Effective Counseling of the Elderly: The Attorney-Client Relationship, produced jointly with the ABA Young Lawyers Division Committee on the Delivery of Legal Services to the Elderly; as well as from a 1991 publication by Legal Counsel for the Elderly, American Association of Retired Persons (AARP), entitled Legal Interviewing Skills. It also draws heavily on the excellent 1981 book Counseling Older Persons: Basic Helping Skills for Service Providers, edited by Mary Ganikos and Jane Myers.

The current booklet is a joint effort of the ABA Commission and the Elder Law Support Project of AARP/Legal Counsel for the Elderly. It is one piece of a multipart Legal Counsel for the Elderly
training program that also includes materials on the mental and physical effects of aging, ethical issues for advocates, and cultural diversity issues in a legal setting. While the booklet is aimed at attorneys, paralegals and other advocates should find it useful as well.

The booklet alerts attorneys to the dangers of "ageist" stereotypes, provides a brief overview of the aging process, describes the optimal interview setting, and offers techniques for the initial interview. It discusses the use of questions, dynamics, and common problems of the ongoing attorney-client relationship, including referral, and closure. We hope that these suggestions will strengthen legal counseling of older persons, fostering interactions satisfying to both attorneys and clients, and encouraging practices that "deal day to day with issues and relationships which are precious, complicated, interconnected. It's important work, and intrinsically rewarding" (American Bar Association, 1985).
II. KNOWING YOURSELF

An attorney’s willingness to examine his or her own attitudes about aging is fundamental to successful communication with older clients. These attitudes may come not only from the "ageism" inherent in our society, but also from prior relationships the attorney has had with older persons throughout life:

Whether we are conscious of it or not, each time we encounter older people we carry with us feelings and experiences from prior relationships with grandparents, parents, or parent figures we have known. Failure to acknowledge this causes us to relate to our present elderly friends in many of the same patterns and ways we related to the persons in our past (Keys, 1983).

Understanding these dynamics will allow the attorney to relate more directly with the older client, and treat the client with respect. Moreover, preconceptions about aging can inadvertently influence the form of legal advice given. Attorneys must recognize that their older clients are adults experiencing increasing limits on their autonomy as they age. Physical and financial independence may increasingly be threatened. Their social and family world may be shrinking at a frightening rate. Because of this, the attorney must give particular attention to avoiding overly protective and intrusive responses. Common myths, actual facts, and implications for the attorney-client relationship are set out in the chart on page six.

An extreme example of overintrusiveness might be concluding that an older client needs a conservator or guardian where a limited power of attorney could be sufficient. More frequently, overintrusiveness may take the form of the attorney telling the client how to run his or her life, or listening more to the client’s family than the client. Stereotyping may result in a generalized skepticism of older clients’ abilities to make their own decisions or to explain their own problems. The perception that older clients are inherently less than competent, and thus not to be trusted, obscures the appropriate goal of providing the client with information necessary to deriving his or her own legal solutions. The attorney must be wary of the erroneous attitude that older persons need decisions made for them.

Another reason for self-examination is that attorneys wield tremendous power in their role as helpers. Like all clients, older clients depend on the expertise of their attorneys. Attorneys therefore must carefully identify, and seek to limit, the degree of dependence that exists in each case. Because attitudes toward aging affect one’s ability to set appropriate professional limits, attorneys can avoid inadvertent misuse of power by identifying, questioning, and adjusting these attitudes.
### AGE MYTHS OF LEGAL COUNSELING

<table>
<thead>
<tr>
<th>Myth</th>
<th>Fact</th>
<th>Effect on Legal Counseling</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chronological age determines physical, mental, and emotional status.</td>
<td>There are great differences in the rates of physiological, psychological, and social aging from person to person.</td>
<td>Attorney may stereotype on basis of chronological age, and misunderstand older person’s real needs and priorities.</td>
</tr>
<tr>
<td>All older people are alike.</td>
<td>The older population is a diverse group, with a wide range of lifestyles, interests, and incomes. Each person has a unique make-up of heredity and experience regardless of age.</td>
<td>Stereotyping may interfere with clear communication and development of client trust.</td>
</tr>
<tr>
<td>Older persons are unproductive.</td>
<td>Absent disease and hardship, many older persons are actively involved and productive. Most want to remain active and self-sufficient. More than a quarter devote time and energy to volunteer work.</td>
<td>Attorney may not see older clients as capable of articulating needs and participating in legal process and decision making.</td>
</tr>
<tr>
<td>Older persons are inflexible.</td>
<td>Inflexibility is a character trait, not connected with age. Studies show personality does not change with age.</td>
<td>Attorney may fail to present full panoply of legal options. Attorney may misjudge client’s willingness to settle.</td>
</tr>
<tr>
<td>Older persons are senile, forgetful, and confused.</td>
<td>Confusion and disorientation, often labeled senility, may be the result of emotional, nutritional, or drug problems, and often are reversible. Studies show the ability to think and reason does not decrease with age, and that less than 55 percent of older persons have severe cognitive impairment from Alzheimer’s disease or other incurable brain disease.</td>
<td>Attorney may fail adequately to involve client in legal process and decision making. Attorney may advise overly restrictive alternatives. Attorney may fail to make appropriate referrals to social service agencies regarding nutrition or depression.</td>
</tr>
<tr>
<td>Older persons withdraw from life, cannot learn, and prefer to live in the past.</td>
<td>Many older persons are actively engaged in family, community, church, civic, social, and recreational interests.</td>
<td>Attorney may fail to see client as whole person; may fail to engage on informal, personal level.</td>
</tr>
<tr>
<td>Most older persons have disabilities.</td>
<td>While older persons are more susceptible to disease and injury, and while functional limitations increase with age, the vast majority of older persons are self-sufficient. Less than 5 percent live in nursing facilities. Most can live independently or with assistance in the community.</td>
<td>In legal planning, attorney may make incorrect assumption about client needs.</td>
</tr>
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Attorneys counseling older clients must recognize the dangers of "ageism," yet be sensitive to problems that often accompany the aging process. Attorneys who successfully and consistently walk this fine line will gain the trust of their clients, and make the counseling experience both empowering and satisfying for their clients.

AGE MYTHS IN COUNSELING: CLIENT INDIVIDUALITY

I had an attorney . . . but he thought . . . I was just an old man (U.S. House of Representatives Subcommittee on Health and Long Term Care, 1987).

In 1968 Robert Butler coined the term "ageism" in his Pulitzer Prize-winning book Why Survive? Being Old in America:

Ageism can be seen as a systematic stereotyping of and discrimination against people because they are old . . . . Old people are categorized as senile, rigid in thought and manner, old-fashioned in morality and skills. . . . Ageism allows the younger generations to see older people as different from themselves; thus they subtly cease to identify with their elders as human beings (Butler, 1975).

Ageism is manifested in deeply rooted societal myths that can be damaging, even potentially devastating, to older persons--and to the attorney-older client relationship.

The essential factor in knowing a client is development of an appreciation for his or her individuality. An 85-year-old client has seen two world wars, the Great Depression, rapid technological advancement, increasing urbanization, major growth in the federal bureaucracy and its functions, and other fundamental changes that may affect his or her attitudes and individual expectations. Attorneys need to sharpen their awareness of their older clients as having both personal and cultural histories. Sensitive communication of this awareness can significantly improve the working relationship. It contributes to the growth of confidence and trust between the client and the attorney, facilitates greater client participation, and results in more efficient and successful identification and resolution of legal problems.

THE AGING PROCESS

Knowledge of the aging process is necessary to understanding the older client. Normal biological aging affects everyone, albeit at different rates and in different ways. Awareness of these normal processes underlies development of techniques for reducing barriers to clear and thorough communication with the older client.
The attorney must develop sensitivity and a willingness to enhance the client's decision-making capacity in spite of apparent physical limitations. Awareness of the normal processes of aging enhances the ability of advocates to guard against stereotypes that unconsciously influence the counseling relationship.

**Physiological Aging**

Physiological aging involves the permanent loss of cells affecting a variety of organs. There may be a reduction of muscle strength and joint flexibility. An older person's reserve capacity and recovery rate are decreased. Bones may change as well. Osteoporosis is a degenerative bone disease prevalent in older women that makes bones weaker and more susceptible to fracture. In addition, the apparent fragility that accompanies the normal aging of tissue and bones may evoke in an observer unconscious but inaccurate assumptions about the elderly client's mental and intellectual functioning.

**Hearing**

Many older people are subject to progressive loss of hearing often called presbycusis. An estimated 60 percent of Americans over 65 have some degree of hearing impairment, with the proportion jumping to 90 percent among people over 80 (Weinstein, 1989). Damage to nerve endings deep within the ear is one common cause of hearing loss (Karp and Michaelson, 1990). A combination of factors—heredity, circulatory disorders, disease, exposure to excessive noise at any time of life—can contribute to hearing loss (Karp and Michaelson, 1990). The result may be impaired sensitivity to higher sounds, loss of directional hearing, hypersensitivity to loudness, tinnitus (a ringing in the ears), or a general decline in the ability to process sound (Farrell, 1990). Background noise causes significant problems for mental processing of spoken information because of difficulty in discriminating between sounds.

While never assuming that older clients necessarily suffer from hearing loss, attorneys should know that about 30 percent of all older people experience serious hearing loss. Men experience hearing loss more commonly than women. Most often, it is the upper ranges of sound that are lost.

Hearing loss may also affect the individual's psychological health and relationship to the society in which he or she lives. Communication with those on whom the individual depends—family, social workers, doctors—may become increasingly difficult, resulting in depression and a sense of social isolation. Because it can lead to paranoia and suspicion, hearing loss is potentially the most problematic of perception losses. A client with a hearing impairment may instinctively "fill in" what he or she believes is needed to complete a partial message. The attorney must therefore exercise care to verify accurate communication, and to maintain direct contact with the client:

The lawyer may need to be particularly solicitous of the hearing impaired client who feels cut off from others and deprived of control. She can do this by responding promptly to the client's questions and taking care not to deal with the client solely through a third party (Smith, 1988).
Practice Tips

- Do not mistake hearing loss for mental confusion or dementia.
- Do not assume hearing impairment, but be alert for signs such as bending of the head, lack of expression when listening, inattentiveness, or inappropriate responses.
- Speak clearly and enunciate clearly.
- Recognize that persons with hearing loss or hearing aids often have trouble discerning sounds in noisy environments. Screen out background noise (TV, radio, traffic, air conditioners, car motors, etc). Close the office door to screen out other voices and office noises.
- Face the client so he or she can see your face, especially your lips, for visual cues.
- Do not obscure your mouth with your hands, with a pen, etc., when you are speaking. (Note: A mustache may make it difficult for a hard-of-hearing client to follow conversation, since the mustache can hide your lips.)
- Position yourself so the light is above or shining toward you.
- Get the person’s attention before you begin to speak by addressing your client by name, by shaking your client’s hand, or by touching your client on the shoulder.
- Do not smoke or chew gum.
- Use your hands and facial expressions to emphasize what you say.
- Speak in a low pitch, especially if your voice is high.
- Speak at a moderate rate. Speak slowly and allow time between sentences. Be careful not to overarticulate, as it distorts your lips.
- Do not drop volume at the end of a sentence.
- Do not shout. This creates a booming effect and makes it harder to hear.
- Do not make important points in passing. Rephrase them. Paraphrase or repeat the client’s own statements to check for accurate communication and to involve the client.
- Provide written summaries and follow-up material.
- Ask the client for feedback.

Vision

The normal aging process also affects vision. Farsightedness (presbyopia) is common. Vision may be impaired as the lens of the eyes loses flexibility. The practitioner of elder law needs to be aware of "visual images created by the manipulation of light and shadow" in arranging the interview environment (Portnoy, 1989). In addition, when the lens of the eyes thickens, the amount of light that enters the eye is reduced. Color differentiation decreases and contrasts may be less evident. The red-orange-yellow end of the spectrum is more easily discerned. It is harder to discriminate between green-blue-violet.
**Practice Tips**

- Increase lighting.
- Use good lighting without a glare on your face or on reading surfaces. Light should be above or shining toward you.
- Do not seat the client facing an uncurtained window where glare may be a problem.
- Allow ample time for reading printed materials. Use verbal reinforcement, or read aloud when appropriate.
- Use sharp color contrasts in printed materials and in office design.
- Move or cover glare-causing objects such as mirrors, vinyl, glass tabletops, and even glossy magazines that receive light from an intense light source.
- Have well-lit hallways.
- Paint or tape edges of stair risers to help with losses of depth perception.
- Use bells in the elevator to identify floor.
- Illuminate signs.
- Make sure lobby directories are clear to read and free from glare.
- When putting things in writing:
  - Be sure papers have ample white space.
  - Consider double-spacing. Consider line length imprinted materials: optimum line length is just over four inches, with six inches maximum.
  - Use large print with clean serif typeface. Twelve-point type (about one-sixth of an inch high) is recommended for older persons (14 point for persons with visual impairments). Avoid using "all caps" and avoid italic type (American Bar Association, 1992).
  - Simplify language.
  - Organize content.
  - Avoid acronyms.
  - Break information into small pieces.
- Offer your arm to a person with a serious visual impairment. Since guidance rather than support is needed, let the person take your arm just above the elbow. If you walk a half step ahead, the person can anticipate your movements.

As with hearing loss, vision impairment can result in a sense of isolation for the older person. This sense of isolation can "severely limit the older person's verbal expression of needs and desires" (Portnoy, 1989). The attorney must work harder at eliciting complete information with the client who has a hearing or vision impairment.

**Psychosocial Aging**

The aging process may involve losses that impact on the individual's relationship to self and society. The physiological losses of hearing and sight are noted above. Other age-related losses occur with the death of family and friends and a reduction of income, status, and sense of usefulness and control.
There may be a general shrinkage of the world and autonomy. The individual’s self-esteem may be eroded as traditional measures of success blur or disappear. Depression and anxiety that accompany loss of self-esteem can interfere with communication both to and from the individual (Portnoy, 1989). Moreover, all of this is accentuated in an institutional setting, where physical environment, diet, and daily routine are out of the resident’s control.

<table>
<thead>
<tr>
<th>Practice Tips</th>
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<tbody>
<tr>
<td>- Pay particular attention to developing trust and confidences. Stress the confidential nature of the attorney-client relationship.</td>
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<tr>
<td>- Talk directly to the older client, not past the client to other family members.</td>
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<tr>
<td>- An older client may not confide in counsel as quickly as a younger client. Take extra time.</td>
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<td>- Listen for emotional undercurrents in the client’s explanations, and consider how they might bear on the advice given or the way in which it is given.</td>
</tr>
<tr>
<td>- Recognize the client’s need for control and autonomy. Emphasize options that build on this need, and encourage the client to play as great a part as possible in any decision or plan. Call upon the client’s experience.</td>
</tr>
<tr>
<td>- Address the client as Mr., Miss, or Mrs. unless you have a longstanding, informal relationship.</td>
</tr>
<tr>
<td>- Don’t help too much.</td>
</tr>
<tr>
<td>- Explain options and their consequences clearly so the client is informed, has realistic expectations, and can make a knowing choice.</td>
</tr>
<tr>
<td>- Understand that older clients may be psychologically and emotionally different from younger clients—and may make choices based on different values.</td>
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The attorney should not be surprised if the elderly client makes different decisions about exercising his rights than a younger client might. The elderly person may be more concerned with his relationships with others than with his finances, or place a higher value upon tranquility within his family than upon asserting his individual rights (Smith, 1988).

**Mental and Intellectual Changes**

A failing in mental abilities is not a normal part of the aging process. Studies show that while intelligence-test measures of new learning or learning requiring speed may decline "crystallized and non-speeded facets of intelligence often remain stable through the 60s and 70s" (Nadieu, 1989). The difficulties that older people have with memory may be related to poor initial learning or a general slowing in behavioral processes. The emotionally and physically healthy older person is able to learn and retain as well as a younger person when allowed to learn at his or her own pace. (Nadieu, 1989).

There are of course emotional and physical conditions that may interfere with an older person’s mental functioning. A small percentage of the elderly do suffer from Alzheimer’s disease and other types
of irreversible organic brain syndrome. Temporary, treatable confusion stemming from other causes, however, often masquerades as dementia.

**Practice Tips**

- If an older person seems confused, speak slower and break down the information bit by bit.
- Use paraphrasing to check accuracy. Paraphrasing allows your client to consider the meaning of what was said.
- Recognize that each person is an individual.
- Recognize that there may be ups and downs and temporary changes in mental status.
- Recognize that temporary conditions may offer a misleading appearance of impaired intellectual functioning, such as depression due to age-related losses and grieving; poor nutrition; thyroid insufficiency; medication-related problems (including incorrectly prescribed medication, overmedication, and drug interactions); sight or hearing loss; physical hesitancy or tremors; and too rapid a change in location or topic.
- If you suspect the client is suffering from malnutrition depression or drug reaction, consider suggesting an appropriate referral. (You might also encourage client to go to the same pharmacist for all medicine so that drug interactions can be screened, or suggest that client attend a "brown bag day" at a local pharmacy where a pharmacist can review all medications.)

Linda Smith, in her seminal article "Elderlaw: Representing the Elderly Client and Addressing the Question of Competence" (1988) describes a technique of *gradual counseling* to enhance the decision-making potential for clients of limited or fluctuating capacity:

The attorney for the limited client should engage the client in a process of gradual decision-making which will involve clarification, reflection, feedback and further investigation . . . . Gradual counseling requires the attorney to repeatedly refer to the client’s goals and values in assessing each alternative and in discussing the pros and cons of an alternative. This will involve a great deal of clarifying and reflecting of the clients’ thoughts and feelings . . . . The attorney should proceed to explain each relevant option and elicit the client’s reactions. The lawyer may also need to present fewer choices and only the most salient features for or against each alternative.

Normal aging may result in some degree of short-term memory loss. Sensory degeneration may affect short-term memory. Distractions inherent in the tasks of day-to-day living in the face of aging may block the immediate acquisition of information and may impede the ready retrieval of information from memory. These and other factors can sometimes interfere with the process of obtaining information (Gress & Bahr, 1984). Short-term memory loss, however should not be confused with a decrease in basic intellectual capacity to understand and make decisions.

Nor should short-term memory loss be confused with the drastic, sometimes wholesale loss of memory experienced by persons with Alzheimer’s disease.
<table>
<thead>
<tr>
<th>Activity</th>
<th>Alzheimer Patient</th>
<th>Memory Impairment - Age Associated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Forgets . . .</td>
<td>The whole experience</td>
<td>Parts of an experience</td>
</tr>
<tr>
<td>Remembers later</td>
<td>Rarely</td>
<td>Often</td>
</tr>
<tr>
<td>Can follow written or spoken directions?</td>
<td>Gradually unable</td>
<td>Usually able to follow</td>
</tr>
<tr>
<td>Able to use notes and reminders?</td>
<td>Gradually unable</td>
<td>Usually able</td>
</tr>
<tr>
<td>Able to care for self?</td>
<td>Gradually unable</td>
<td>Usually able</td>
</tr>
</tbody>
</table>

Excerpted from "Memory and Aging" brochure produced by the Alzheimer Association. Reprinted with permission.


CULTURAL DIVERSITY

In learning to recognize the client’s individual needs, attorneys should be aware of major subgroups within the community, such as ethnic, racial, or religious groups, widows, frail clients, and nursing home residents. Widowed or divorced women who have been dependent on husbands for financial income and management, for example, may have special needs for assistance with money management, access to pensions, and financial planning.

Heightened sensitivity to the needs and cultures of major subgroups is an important goal for attorneys who have a professional commitment to serve all their clients well. There may be language barriers that can be dealt with either by knowing the language, by translation, or through written messages. Attorneys should learn about the traditions of local ethnic groups. In addition, they need to be alert to historical racial barriers that may block the open communication necessary for good legal counseling.
Practice Tips

• Develop a philosophy of "different and equal."
• Avoid influence of racial myths and negative stereotypes.
• Begin cross-cultural education by reading about and talking with minority persons. Learn about cultural backgrounds, customs, and values of the minority people with whom you interact. When appropriate, ask the client about his or her own special traditions.
• Become aware of cultural orientations of common words, trends, and policies.
• Project a warm but professional approach until a relationship is established. An overly familiar approach may be seen as a put-down.
• Learn about the different implications of body language in the groups from which your clients come.
• Avoid physical contact. As an attorney-client relationship develops, evaluate when and if any physical contact (such as shaking hands) is acceptable.
• Learn to listen actively. Remember, communication is both verbal and nonverbal.
• Be flexible, patient, and tolerant.
• Become aware of natural resource support systems, formal and informal, available within diverse communities.
IV. KNOWING THE TECHNIQUES

Building the trust of older clients begins with—and even before—the initial meeting. The tone and setting for this meeting are critical. To create client confidence, examine communications before the initial interview, office accessibility, comfort and privacy, meetings at other locations, the time factor, the third-party factor.

BEFORE THE INTERVIEW

Convey a sense of clarity and willingness to help from the very beginning:

Practice Tips

- Use business cards that are clear and easy to read, in 12- or 18-point type, no italics, no all-caps.
- Consider sending an introductory letter, 12-point type, with a map to the office.
- Practice, and instruct office staff to practice, basic principles of telephone interaction: speak clearly, listen actively, be empathetic, don’t rush explanations or directions.

THE OFFICE

Accessibility

Private law firms and private, non profit legal aid offices are "public accommodations" under Title III of the landmark Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12181-12189. The ADA requires public accommodations to make reasonable modifications to their policies, practices, and procedures in order to make services available to people with disabilities. A public accommodation must remove architectural barriers in existing facilities if removal is "readily achievable." While many older persons do not have disabilities, functional limitations tend to increase with age, and thus some older clients may have physical, communications, or cognitive impairments.
Assessing the Accessibility of Your Law Office

- Check routes of public, accessible transportation to the office. Become familiar with the local paratransit plan required under the ADA. Call the local agency on aging to check on transportation for seniors.
- Ensure accessible parking spaces.
- Check for a continuous unobstructed route from public transportation and accessible parking into your building and office.
- Consider low-cost ways to remove barriers or provide alternatives—such as using a portable ramp, using a first-floor conference room if there is no elevator to the higher floors, widening doors with offset hinges or reducing door pressure, attaching adapters to round doorknobs, and increasing lighting. Seek help from disability groups in your area (American Bar Association, 1992).

Comfort

Strive for an office setting that seems professional (but not remote or threatening), comfortable and orderly, confidential, and caring:

Assessing Your Office for Comfort and Privacy

- Have chairs in the waiting room and in your office that are comfortable but supportive. Check for slippery floors and dangerous throw rugs.
- Move the chairs in your office, depending on the situation, to convey greater informality or empathy. Your client may feel you are removed and detached if you sit behind your desk and try to discuss the case across an expanse of papers, cups, and pens. Moving your client’s chair next to your desk may encourage the feeling of being “in this together.”
- Ensure privacy during the interview. Closing the door will preserve confidentiality and cut down on background noise. Ask the client’s preference first, emphasizing the importance of confidentiality.
- Be sure the client is not facing glare from a window or light.
Meeting Sites

Attorneys must also be ready to meet with older clients in nursing homes, hospitals, adult residences, or the client’s home. In institutional settings, try to find a quiet, private space away from common areas. Often, observing the facility setting or the interior of the client’s home will help you to better understand the client’s concerns, and to see things through the client’s eyes.

TIME

Consider scheduling appointments according to the older client’s limitations—medication, public transportation, times associated with fatigue. Allow plenty of time for the interview so the client does not feel rushed or intimidated. Explain any time constraints at the beginning of the interview, and assure the client you will follow up later. Ensure that there are no interruptions during the session.

THIRD PARTIES

If the client has brought another person to the interview, determine the role of the companion before beginning. The companion may have been invited to give moral support, to help the client explain or understand information. Interview the client alone to begin developing trust and confidence. Question the companion separately. Remember that the presence of other persons during the interview could affect the attorney-client privilege. (An interpreter for non-English-speaking clients or clients who are deaf, however, should not affect the privilege.) Be sure the client understands his or her right to confidentiality, and has knowingly waived the right prior to an interview with a companion present.

THE INITIAL INTERVIEW

The initial interview is the pivotal event in the attorney-client relationship. It is a complex process. Both participants come to it with needs, expectations, interests, and history. The client needs to tell his or her story, convey and receive information, ask questions, participate in devising a solution to the problems, and feel comfortable with the give-and-take of the session. The attorney needs to lay a solid foundation for ongoing contacts, establish an atmosphere of trust, gather facts, explain legal options, and help the client understand these options.

The main keys to open communication during an interview are the simplest: take time, be patient, show respect, and listen carefully. Be empathetic, indicating that you heard the client and understand the feelings. Let the client know that details and straightforward information are important to the success of the effort.

Stages of the Initial Interview

The initial client interview generally will go through three stages: introduction and identification of the problem; a more or less chronological account of the situation; and development of the facts and
the theory of the case. These stages resemble an ever-narrowing spiral leading to the heart of the problem. The interview begins broadly with the preliminary phase and, through the chronology and development phases, winds into the center of the circle where you hope to uncover the fundamental issue. The following figures suggest practice tips for each stage of the initial interview.

**Stage I - Preliminary: Orientation**

- Introduce yourself, and sketch out what will occur during the meeting. The client may be nervous, so you will have to take time to "break the ice" and put the client at ease.
- Begin to evaluate what will encourage the client to present the facts, and begin to determine whether the problem is legal in nature. Open-ended questions that allow the client to talk freely (even to ramble) are useful at this point.
- Listen for clues to the client's underlying needs and expectations.
- Emphasize confidentiality. Older persons may be uneasy about sharing personal concerns. They may fear that telling their problems risks loss of benefits or control over their own affairs. Stress that discussion of the client's concerns will not be repeated to family members, social workers, doctors, etc., without explicit consent.
- Explain the need for note-taking, and that the notes will remain confidential. Avoid excessive focus on notes that detracts from attention to the client.

**Stage II - Chronology: Tell the "Story"**

- A chronological "storytelling" phase will help the client to recall details in sequence.
- During this stage the advocate can begin to guide the client with questions such as "What happened next?"
- Use eye contact to help convey interest in the client's story.
Stage III - Development: Fill in the Details

Development Stage
- Use specific, narrow questions that target solutions and need for investigation.
- Try to listen for things the client may not have said. Pay attention to emotions, word emphasis, and gestures. Explore their implications with the client.
- Let the client know that details can be critical and that providing complete facts is in the client’s best interest.

COMMUNICATION TECHNIQUES

Advocate: Why didn’t you tell me that before you testified?
Client: Because you never asked me.

The Use of Questions
Crafting interview questions requires careful thought. Are there too many, too few? Is one too leading, one too broad? The form of your questions and their sequence influence the information you obtain from your client as well as the atmosphere you create during the interview. Too many narrow questions may leave gaps in information. Improperly framed leading questions at best can distort the facts, and may confuse your client about what you believe is important. Too many detailed questions may cause anxiety that inhibits rather than enhances your client’s ability to recall key points. Questions that call only for the client’s conclusion without probing the underlying facts are virtually useless in furthering development of the case.

There are four primary categories of questions: open-ended, yes-or-no, limited focus, and leading. Each has advantages and disadvantages—beneficial or detrimental—to securing an accurate account of your client’s situation. Open-ended questions allow the greatest latitude as to subject matter and details. Leading questions are the opposite: they leave little room for the client to improvise and, in fact, generally suggest the answer. Yes-or-no questions and limited focus questions lie somewhere in between and are used to channel the discussion and fill in gaps.
Open-ended Questions. Open-ended questions can be very broad, giving the older client free rein to select topic, event, place, or other items. Or they can be more directed, while still allowing the client to decide what to convey. ("After you opened the door, what happened?") Open-ended questions have advantages and disadvantages. They are well suited to establishing a comfortable setting for the client at the outset of the interview. They communicate your interest and allow the client to relate those things that the client is initially most comfortable discussing with you. Useful in painting the total picture of your client’s case, these questions often pick up details that might be overlooked when responding to narrower inquiries. They do not interfere with a person’s natural memory flow and, therefore, enhance recollection. On the other hand, much irrelevant data will be recounted during the client’s initial open narrative, and important detail is often ignored. Open-ended questions do not generally stimulate memory as do narrower ones. With a more reluctant client, they may create additional uneasiness and inhibition.

Yes-or-no and Limited Focus Questions. Yes-or-no limited focus questions direct your clients’ attention to information you identify as significant. Yes-or-no questions offer the client two possible answers ("Did you sign the contract?"). Limited focus questions restrict the scope of the answer sought, but give the client more option ("What time did the nurse arrive?").

Narrow questions elicit details that you need in order to devise possible solutions to your client’s problem and can serve to jog the client’s memory about matters the client would not have considered otherwise. Narrow questions may increase the confidence of a hesitant client—he or she then knows what facts you are looking for and they can be particularly useful when approaching a sensitive topic.

Too many narrow questions often obscure the true picture of the client’s case, and they may also leave the client feeling like he or she was never allowed to tell you the story or that you are asking about things that are none of your business. A series of narrow questions with no overview of the client’s individual case may lead you to assume certain details without hearing your client’s actual experience. Your pointed questions about a problem with an insurance company, for instance, may be based on an incident in your own life or on the dozens of other insurance company stories you have heard. You may then overlook critical aspects of this client’s case.

Leading Questions. Leading questions suggest their answer ("You couldn’t see the bottom step, could you?") and simply request confirmation of your own thoughts rather than produce additional facts. They are framed in your words after you have decided which fact you want to verify certain elements.

Leading questions permit you to check the accuracy of information, your recall of details previously told to you, or your understanding of what your client said. They may also help a reluctant client delve into sensitive topics by conveying your experience with similar information.

Suggesting an answer, however, runs the risk of distorting the response you receive. Older clients may misunderstand the question itself or misinterpret the type of information you are looking for. The
risk of "going along" is especially high if the client thinks the form of your question is a comment on his or her case (American Association of Retired Persons, 1991).

**Paraphrasing**

Paraphrasing is a key tool for checking accuracy of communication. Experts in counseling have pointed out both the benefits of paraphrasing and the dangers of misuse. Paraphrasing:

- provides an accuracy check. By paraphrasing back to the client what the client has said, the attorney can find out if the message that was heard is what was intended by the speaker,
- keeps the attorney and attorney's opinions out of the way, while giving the older person a chance to explore problems and needs in his or her own way,
- tends to reduce aimless repetition. If the older client or any client knows the attorney has understood the message, the client is not quite as apt to repeat things,
- shows the attorney is interested and paying attention,
- gives the older person a feeling of support from being understood,
- gives the older person a chance to hear and examine what was said,
- allows the older person to consider the meaning of what was said and thus gain direction toward possible solutions,
- provides the opportunity for hearing thoughts voiced in another way, which often helps the thoughts make more sense.

It is important to remember that paraphrasing is a technique, and like any technique can be misused. Too much paraphrasing comes off sounding "canned," and will result in inhibiting or angering the older person rather than facilitating the conversation. Some key times to paraphrase are when:

- you think the older person is not sure whether or not you are understanding his or her meanings;
- you are not sure you understand the older person's meaning;
- the older person has let loose with a rush of words; and
- you think you want to disagree with what was said.

Generally speaking, if your use of paraphrasing is appropriate, the older person will respond by saying such things as "right," "yes," or "that's it." In addition, the person will tend to talk more about the subject, usually in greater depth. People will talk to an attorney about their concerns only when they think the helper is showing genuine interest and true understanding. Those two things can be accomplished by appropriate paraphrasing (Ganikos & Myers, 1981).

**Checking Credibility**

Beyond the facts, you must also investigate factors affecting your older client's ability to perceive what he or she reported and to remember and recount it accurately. Later in the case you will
undoubtedly encounter conflicting reports, and it will be important to understand the basis for your client’s version. Checking the factors influencing your client will also tell you whether you need to probe your client’s memory in greater depth.

**Significance of the Event.** If the event was *personally* important to your client or occurred when little else was happening, your client will likely have paid greater attention to it and to the details surrounding it.

**Emotional Factors.** If your client was concerned about his or her own safety or well-being, your client may not have observed details around the event. Also, your client may have been thinking about something else at the moment the event occurred. Assess the amount of stress your client was experiencing at the time, caused either by the event or by other factors in your client’s life.

**Physical Factors.** Age, health, intoxication, fatigue, vision problems, and defects in hearing all contribute to the manner in which the experience was observed and retained.

**Expectations.** All people have biases and prejudices through which they view events and the people around them. Perceptual distortion caused by stereotyping may be unconscious but has a very real effect nonetheless.

**Environmental Factors.** Ask about time of day, street lighting, room lighting, weather conditions, location of the sun, noise level, distance from the event, and other activities taking place near the event.
V. ONGOING ATTORNEY-CLIENT RELATIONSHIP

While your older client may be one of a large caseload, you are probably your client’s only legal advocate. The client perceives him or herself in a continuing relationship with you. This continuing relationship requires regular contacts with the client while enhancing the client’s independence. It also requires the attorney to recognize possible roadblocks to communication as the relationship progresses. Finally, the attorney needs to know what to do when problems of clients are not legal in nature, and how to deal with special problems in the relationship, such as anger, dependence, or sadness.

CONTINUING CONTACT

Both the attorney and the client benefit from maintaining regular contact. The client feels that he or she is important and has not been forgotten. The attorney benefits by controlling the time and frequency of contacts. While it is not the role of the attorney to act as either social worker or psychiatrist, the attorney should be aware of the importance of encouraging independence, enhancing self-esteem, and encouraging the client to be assertive. Clients are and should be the decision makers in the attorney-client relationship. Respectful and empathetic treatment nurtures the independence and sense of self-esteem necessary to decision making.

In addition, regular and substantive contacts create opportunities for enhanced understanding of the case. The attorney, for example, may wish to give the client written questions to think about at home, thus helping the client feel more involved and in control of the process and perhaps providing the attorney with critical information.

Maintenance of the continuing relationship provides opportunities for encouraging the client to be assertive and to perceive assertiveness as non-threatening, facilitating both communication and willingness to follow through with a case. Assertiveness is the skill of being able to say things that an individual believes need to be said without either fear of reprisal or of alienating the listener. There may be a number of barriers to assertiveness. Individuals may believe that:

• others’ needs are more important than theirs;
• it is rude to express one’s needs;
• people will not like them if they are assertive;
• assertiveness may lead to confrontation; or
• it is easier to do what others want (Ganikos & Myers, 1981).
Older individuals have the right to have their needs met without intrusion from others. The attorney can convey certain important principles for assertive behavior.

- Be persistent. Your needs matter; stick with it until they are met.
- Don’t be drawn into side issues.
- Don’t be defensive. You need not apologize for being assertive.
- Don’t allow yourself to become aggressive. Screaming and threats are not necessary to get needs met.
- Don’t feel guilty. It is okay to say no.
- Don’t blame. Talk about yourself, not the other.
- Be specific. Describe the behavior that is troublesome, not the whole person (Ganikos & Myers, 1981).

ROADBLOCKS TO COMMUNICATION

The Attorney

Because of increasing dependence on a system of public benefits and regulation, older clients often have more legal or informational problems than they initially indicate. Open communication therefore is essential to full identification of client needs. Inappropriate responses by the attorney to client statements or questions may result in the failure to discover these legal difficulties. Richard Blake and Georgia Bichekas (Ganikos & Myers, 1981), both gerontologists and counselor educators, have identified three types of responses that may result in faulty communication if used inappropriately or insensitively: sending solutions, evaluating, and withdrawing.

Sending Solutions.

- Ordering: telling someone what to do. Ordering usually makes people feel resistant and resentful. It also sends a message: "I don’t trust your judgment."
- Threatening: trying to control other’s actions by warning them of negative consequences.
- Moralizing: telling others what they should or ought to do.

Blake and Bichekas include in this list the dangers of advising, arguing logically, and questioning. These dangers are all inherent in the attorney-client relationship. Even in the context of legal counseling, however, they can be used at the wrong time or place and thereby cause a communication breakdown. Giving advice that is specifically requested, for example, would be appropriate, while going beyond the scope of the advice sought may cause resentment or overdependence.

Evaluating.

- Judging: making a negative evaluation of the other’s thoughts, attitudes, and feelings. Judging tends to lower the other’s self-esteem and create defensive countercriticism.
- Praising: manipulating through positive valuing of another’s thoughts or actions.
- Name calling: stereotyping or labeling another.
- Diagnosing: analyzing why; letting the other know you have it all figured out.

**Withdrawing.**

- Reassuring: saying and doing things to make the other feel better. Reassuring is a way of changing the focus from negative feelings to something that is less demanding on you.
- Withdrawing/diverting: pushing problems aside through withdrawal, diverting attention through humor, or changing the subject.

**Other Responses.** Additional factors that can undermine effective communication during an interview, making a client unable or unwilling to give accurate information, might include the following.

- Client anxiety. Client may feel nervous during the interview.
- Client self-esteem. Client may feel guilt or embarrassment about the events causing the problem, and then may be reluctant to talk candidly about them.
- Memory of trauma. Client may feel pain and tension associated with an event.
- Belief in irrelevance. Client may perceive certain facts as irrelevant.
- Protocol: role expectations. Client may feel it is improper to discuss certain topics, especially with an attorney of the opposite sex, and perhaps particularly if the attorney is much younger.
- Client capacity. Client may experience diminished or fluctuating capacity.

**The Client**

The attorney may run into problems of resistance, anger, or dependence (Ganikos & Myers, 1981). Resistance can arise at any point during the attorney-client relationship either because clients did not want legal help in the first place, because they do not want to admit the problem exists, or because they do not want to acknowledge their inability to help themselves. People also may resist help when the help that is offered seems ineffective, impractical, or too unpleasant, when they do not trust the attorney, or when they have important things to lose by solving their problems.

**The Reluctant Client.** Some clients are reluctant to discuss specific topics either because they feel stupid, guilty, or self-conscious or because the subject is embarrassing or painful to them.

**The Prevaricating Client.** Clients can lie by giving false information or by withholding information. Withholding information often resembles general reluctance. Watch for internal inconsistencies in the client’s story or details that defy common experience or contradict other known facts. When basing your
Practice Tips

- **Confidentiality.** Reiterate that everything said to you will be held in confidence, not only by you but by your staff.
- **Encouragement.** Giving encouragement is particularly helpful with clients who must recount a painful or traumatic episode. Acknowledge their feelings and allow them time to gather their thoughts.
- **Change in questioning strategy.** If you have been asking open-ended questions, try narrower ones. If narrow questions are not working, try broader inquiries.
- **Discuss the reluctance directly.** Acknowledge that the client may be uncomfortable either with the general interview situation or with talking about the subject. Sometimes you may need to ask whether you have said or failed to say something that is contributing to the client’s discomfort.

Suspicion on the report of a third party, do not mistake lying for differences in people’s perceptions. Also consider the possibility of the client’s honest mistake.

You can discourage fabrication before it happens and address it when it does. Deciding how to handle this issue takes careful judgment. Listen to and watch your client carefully for clues.

Practice Tips

- **Anticipation.** Explain why certain information is important, why clients hesitate to give accurate information, and why complete truthfulness actually helps the client’s case.
- **Clarification.** Point out inconsistencies and ask for clarification directly.
- **Case preparation.** Ask the client to help you overcome statements that contradict the client’s version. Roleplay cross-examination of your client to point out the client’s inconsistencies.
- **Silence.** Say nothing, but maintain eye contact after giving nonverbal clues of your disbelief.
- **Direct Confrontation.** The I-want-the-truth approach will either pressure the client to respond or entrench the client further in the lie. This tactic holds the greatest risk to your relationship with the client.

*The Rambling Client.* The greatest risk of the rambling client is that critical facts will be overlooked in the jumble. Some ramblers just need to verbalize a particular issue and will eventually stay on point. There are others, however, where rambling is a communication style you must learn to manage.
**Practice Tips**

- **Repeated redirection.** Acknowledge the client’s stated concern, then return to the current interview topic. You may have to repeat this sequence many times during the meeting.
- **Explanation.** Spend a few moments responding to the concern your client returns to. Explain why it is important to focus on your issues at the present time, then redirect the client using a narrow question. You can target your questions to particular details once you know the general nature of the client’s problem.
- **Confrontation.** Occasionally, rambling masks a reluctance to discuss the problem with you. Consider asking the client directly if the client is finding it difficult to talk with you and how you can help increase the client’s comfort.

**The Indecisive Client.** Indecisiveness arises in a variety of situations, when the client believes each alternative has advantages and disadvantages, each alternative may have negative results, or all the alternatives have positive aspects. Some indecisive clients are in a genuine quandary about the best course of action in their case. Others, however, are passive decision makers who go along when they believe they should. Clients in the first group can be assisted more easily than those in the second.

**Practice Tips**

- **Express the client’s conflict.** Often when you give voice to the conflicted feelings the client is experiencing in making the decision, the client will be better able to review the alternatives and select one.
- **Develop a rating system.** Help the client evaluate the advantages and disadvantages of various alternatives by how important they are to the client.
- **Offer your opinion.** As a technique of last resort, offer your opinion only after explaining that it is the client’s responsibility to make the ultimate decision, reviewing the pros and cons of all alternatives, and making certain you have all the information you need to tell the client what you think. Give reasons to support your suggestion that are based on your assessment of the factors most important to the client.
The Intractable Client. Clients who have decided what course they wish to pursue may attend an interview simply to confirm their opinion and find out what the next step will be. If the client has correctly identified a solution and the solution is one you feel is appropriate, you must still review the consequences of and alternatives to the client’s suggested approach with the client. If the client has incorrectly identified a solution that you feel is inappropriate, discuss the client’s goals in the case, review other alternatives, and help the client see how other options might accomplish the desired result.

The Angry Client. Some clients may direct anger at the attorney, either as a means of resistance or out of frustration. (If this behavior is chronic, the client may require medical help.) They may feel that the attorney is not treating them as individuals, or that their competence is being questioned. The anger may be transferred from something else to the attorney. Attorneys should be aware of their own responses to anger. An appropriate response relates to identifying the source of anger, and must be empathic and genuine. Angry and counterattacking responses are neither effective nor constructive.

The Dependent Client. A major concern is the degree to which older clients may become dependent on attorneys. Five sources of dependence include experience of important loss (in economic strength, physical health, social status); promotion of dependency by the attorney, even with the best of intentions; history of dependence throughout the individual’s life; response to the client’s fear that the client is no longer capable; and compliance to satisfy others (Ganikos & Myers, 1981). Dependence may be particularly difficult for attorneys who normally do not consider themselves responsible for providing more than legal counsel.

Practice Tips

- Consider what is a reasonable request for help and what is not.
- If requested assistance is not actually needed, an assertive refusal may be more constructive than doing what is requested.
- Remind yourself of your own tendencies about helping. Remember that too much help is contradictory to respect.
- If an older person is your client, carefully consider any efforts of family members to enlist you as their agent in helping the older person. Remember that your prime responsibility is to your client.
- Be explicit about your time limitations and then be consistent. Empathy, genuine caring, and honesty are the most effective and appropriate responses to the dependent client.
CLOSURE

A final aspect of an attorney’s relationship with older clients that needs attention is closure of the individual interview and of the relationship as a whole. Some older clients may be very insistent that the attorney spend more time on their case than is professionally necessary. The source of this insistence may be such factors as loneliness or fear that the attorney will not return. In response, the attorney may feel frustration or guilt.

Practice Tips

- Set a time limit for the visit or conversation when it begins.
- Focus on the fact that this separation is only temporary (if in fact this is true). Let the older person know that you will be back. If possible, specify when you will visit again. That is more reassuring than just saying you will visit or chat again sometime.
- Let people know that you understand and care how they feel. Even though you cannot make their bad feelings go away, and even though you are going to leave, understanding how they feel about it helps.

Most clients can deal with the end of an interview, but these ideas may help to avert difficult and uncomfortable closings.

Attorneys should also pay close attention to the closure of the attorney-client relationship. Because of the many separations and losses they may have experienced, older clients may be more upset by the end of the working relationship than the attorney would expect. The attorney can help by warning clients ahead of time that their business is close to being finished. Such advance warning gives clients time to prepare themselves. The attorney can also review both accomplishments and disappointments. This helps to provide a sense of completion and closure for the client, to enhance the impression of accomplishment. The attorney should also be prepared to hear any feeling of loss that clients might have and be willing to express his or her own feelings. Such openness helps older people recognize that the attorney cares about them as individuals and may make it easier for them to express their own feelings. Finally, the attorney will also want to make it clear that he or she is available if other legal questions arise. Awareness of the difficulties some older people have in ending relationships should ease the discomfort of both the attorney and the client and lead to more constructive and less frustrating closures.
VI. ELDER LAW: A HOLISTIC APPROACH

The legal problems of an older client frequently impact on multiple facets of the client's life. Many of the consequences of legal problems may not require lawyers, but may require the assistance of someone with a different expertise. The advocate must therefore be aware of not only the legal problems and their remedies, but of ways and means to assist the client to find solutions to nonlegal problems. The client may not be aware that legal and non legal problems are related. The client who comes to you because of the denial of a Medicare benefit, for example, may also be having trouble with rent or mortgage payments, Social Security or pension benefits, or food costs. The client may be having difficulties with demands from other family members for money or property, be a victim of financial abuse, be suffering from depression, or be experiencing unidentified health problems.

An attorney serving older persons should be aware of these problems and the relationships between them. The good elder law specialist should understand the client as a whole person and be able to discern a range of legal and non legal problems.

To serve the breadth of needs of the older client, an increasing number of elder law specialists now have social workers and/or paralegals on staff who are familiar with the programs established to assist older persons and how to access these programs. Although this is not essential, the elder law specialist should be aware of the resources, where they are, who they are, and what they can do. A variety of professionals serve older persons. A social worker or geriatric care manager may be able to assist with residential placement or in obtaining nutrition services, housekeeping assistance, bill payers or representative payees for money management help, or other programs designed for older persons. A paralegal can frequently provide all the legal assistance a client needs because so many legal problems for older people may be resolved through an administrative process. A paralegal and social worker working together could be the perfect mix.

When the lawyer identifies nonlegal concerns, the lawyer needs to know what information to give the client about other professionals who may help and how to contact them. The lawyer should discuss with the client what the client wants in terms of the lawyer's involvement with any referral. In the effort to help, the attorney must be careful not to violate the duty to maintain the confidences of the client. The attorney should also remind the client of the right to expect other professionals to maintain confidences and explain that social workers, doctors, etc., should not be talking with the lawyer (or anyone else) without express permission from the client. If the lawyer and the client have developed a trusting relationship, maintaining confidentiality should not prove to be a barrier.
With the growth of the aging population, a multitude of programs have emerged that focus on the needs of older persons. Following is a discussion of the range of referral sources available to the advocate.

REFERRALS

To serve the older population effectively, attorneys must be able to refer the client to appropriate services in the community.

The Aging Network

Attorneys should become familiar with the dynamic national, state, and local social services system established through the Older Americans Act, (42 U.S.C. § 3001 et seq.). Under the act, each state has a "state unit on aging" and is divided into smaller "planning and service areas" administered by over 670 local "area agencies on aging." Older Americans Act funds flow from the U.S. Administration on Aging to the state units on aging, and in turn to the area agencies. These generally contract with local providers for a range of social services, such as transportation, nutrition, homemaker services, adult day care, case management, volunteer programs, and legal services for older persons "in the greatest economic and social need." Many agencies on aging have information and referral systems that can open doors to a range of public and private resources for older clients, including helpful private programs such as those organized through churches.

The Disability Network

Attorneys should also be aware of the more diffuse "disability network" to make referrals of older clients with impairments. Each state has a federally funded "protection and advocacy agency" established through the Developmental Disabilities Assistance and Bill of Rights Act of 1975, Public Law 94-103, and the Protection and Advocacy for Mentally Ill Individuals Act of 1986, Public Law 99-319. This key agency is charged with protecting the rights of individuals with developmental disabilities and mental illness. Each state also has a "client assistance program," a "developmental disabilities planning council," and a state vocational rehabilitation program established under other federal laws. Many governors have established a commission on disabilities, which is a good one-stop shop for information on state agencies and initiatives. Some localities have a disability agency, often designated as the local Americans with Disabilities Act coordinator for the jurisdiction.

In addition, attorneys should learn about community mental health centers, private mental health practitioners, medical professionals, and local disability-specific organizations (Alzheimer's groups, Self-Help for Hard of Hearing groups, Paralyzed Veterans of America groups, etc.)
Dispute Resolution Resources

Some older clients may have problems that could be resolved swiftly and at low cost through mediation or other dispute resolution. Disputes between neighbors, consumer problems, and landlord-tenant and other housing problems, for example as well as intergenerational conflicts, may benefit from the flexibility inherent in the mediation process. Attorneys should determine whether there are dispute resolution centers in the community and the types of disputes these centers handle. According to the American Bar Association (1989), there are now over 450 community dispute resolution programs and more than 1,200 state court programs.

Making Referrals Easier

Discussing referral with a client who mistakenly is convinced that there is a legal problem or who has been passed off from one referral to another can be difficult.

Practice Tips

- Refer to a professional or agency that you know and trust.
- Know the name of a person at the agency—not simply an office or position.
- Give your client some information about the professional or agency.
- Allow the client to tell you how he or she feels about the referral.
- Let the client know that you are making the referral because you care—not simply to get rid of the client. Explain that you do not have the skill to meet the client's needs.
REFERENCES


**RESOURCES**

**ORGANIZATIONS**

**American Association of Retired Persons, Legal Counsel for the Elderly**
601 E Street NW
Washington, DC 20049
(202) 434-2120
Fax: (202) 434-6464  TDD: (202) 434-6562

A department of the American Association of Retired Persons, Legal Counsel for the Elderly acts as a clearinghouse for information, technical assistance, and training for elder law advocates.

**American Council of the Blind**
1155 15th Street NW
Suite 720
Washington, DC 20005
(202) 467-5081
*Information & Referral Service (toll free):* 1-800-424-8666

Advocacy group for blind and visually impaired persons that operates a toll-free information service that disseminates educational materials.

**American Foundation for the Blind**
15 West 16th Street
New York, NY 10011
(212) 620-2000
*Information Hotline (toll free):* 1-800-232-5463

Provides educational programs, consumer products, and publications for blind and visually impaired persons.

**Bazelon Center for Mental Health**
(formerly Mental Health Law Project)
1101 15th Street NW, Suite 1212
Washington, DC 20005-5002
(202) 467-5730
Fax: (202) 223-0409  TDD: (202) 467-4232

Provides technical assistance and advice to lawyers and other advocates representing individuals with mental disabilities.
Center for Social Gerontology  
2307 Shelby Avenue  
Ann Arbor, MI  48103-3895  
(313) 665-2071  

Provides training and technical assistance to legal advocates focused on law and aging issues. Two newsletters: *Best Practice Notes* and *Headnotes*.

National Academy of Elder Law Attorneys (NAELA)  
655 North Alvernon Way  
Suite 108  
Tucson, AZ  85711  
(602) 881-4005

Membership of attorneys who are particularly interested in the practice of elder law. Provides quarterly newsletter, brochures, listing of attorneys with specialties, audiotapes, annual symposium, and state coordinators for support and technical assistance to members.

National Aging Resource Center on Elder Abuse (NARCEA)  
c/o American Public Welfare Association  
810 1st Street NE, Suite 500  
Washington, DC 20002-4205  
(202) 682-2470

Provides information, data, and expertise to assist in fight against elder abuse. Training and technical assistance available.

National Association of Area Agencies on Aging (N4A)  
1112 16th Street NW  
Suite 100  
Washington, DC 20036  
(202) 296-8130  
*Eldercare Locator* (1-800-677-1116)

Eldercare Locator is a national toll-free telephone database of information and referral services at the state and local level.

National Center for Law and Deafness  
Gallaudet University  
800 Florida Avenue NE  
Washington DC 20002  
(202) 651-5373

Provides information and education on the rights of deaf and hearing-impaired individuals.

National Center on Women and Family Law  
799 Broadway  
Suite 402  
New York, NY  10003  
(212) 674-8200  
Fax:  (212) 533-5104
A national support center working with attorneys, paralegals, and clients on the family law problems of poor women and their families.

**National Citizens’ Coalition for Nursing Home Reform (NCCNHR)**
1224 M Street NW
Suite 301
Washington, DC 20005-5183
(202) 393-2018

Nationally focused on improvement of long-term care. Source of information about regulation of long-term facilities by Medicare and Medicaid as well as on local resources.

**National Hispanic Council on Aging**
2713 Ontario Road NW
Washington, DC 20009
(202) 265-1288

Sponsors training and conferences for people who work with older Hispanics and provides educational materials that are culturally appropriate.

**National Indian Council on Aging (NICOA)**
City Centre
Suite 510W
6400 Uptown Boulevard NE
Albuquerque, NM 87110
(505) 888-3302

Clearinghouse of information on issues of concern to Native Americans.

**National Organization of Social Security Claimants’ Representatives**
6 Prospect Street
Midland Park, NJ 07432
(201) 444-1415
Fax: (201) 444-1823

A national membership organization of advocates working on behalf of Social Security claimants and beneficiaries. NOSSCR sponsors an annual conference.

**National Senior Citizens Law Center**
1815 H Street NW
Suite 700
Washington, DC 20036
(202) 887-5280
Fax: (202) 785-6792

A legal services center support group that provides information and assistance to advocates concerning legal problems of the aged. The center’s offices monitor legislative and administrative activities and proposals, keeping attorneys abreast of new developments in such areas as government benefits, age discrimination, nursing homes, private pensions, alternatives to institutionalization, and Administration on Aging funding.
Advocacy, education, lawyer referral, individual assistance, and grassroots organizing to protect the pension interests of workers and retirees.

ELDER LAW PUBLICATIONS

Newsletters

BIFOCAL. Commission on Legal Problems of the Elderly, American Bar Association, 1800 M Street NW, Washington, DC 20036. (202) 331-2297. Subscription - $12/yr for law libraries $15.00 to all others.

A quarterly newsletter that includes articles covering general elder law issues of interest to bar associations, the aging network, legal service attorneys, and others.


Bimonthly newsletter addressing recent developments in elder law, particularly as they affect the low-income community.

Aging News Alert. CD Publications, 8204 Fenton Street, Silver Spring, MD 20910. (301) 588-6380. $197 annual subscription.

Bimonthly publication covering a wide range of issues, including public benefits and elder law.

Books


An extensive text, with annual supplements, for use as elder law reference or law school text.


A comprehensive two volume text exploring the multiple facets of elderlaw for use as reference or law school text.


A master checklist to assess eligibility for 28 benefit programs, including Food Stamps, Medicaid, Supplemental Security Income, Hill-Burton medical care, etc. Can be used by persons with no
background in public benefits. Also included are state adaptation instructions. An excellent training tool for advocates.


An elder law reference book for lawyers that collects, explains and analyzes federal and state statutes, regulations, and cases on topics relevant to representing the older client. Describes tools, special techniques, and ethical issues elder law attorneys may encounter.

**COUNSELING SKILLS AND BACKGROUND**


