LEGAL ETHICS WHEN REPRESENTING CLIENTS WITH DEMENTIA

- The Five “C”s
- Competence
- Communication
- Confidentiality
- Conflicts
- Capacity – client with diminished Capacity
JOY AND ELMER

- Came home one day and the electric had been turned off
- Joy had managed the household finances for 50 years
- Power Company – bill not paid for three months
- Joy - “I had already written them a check so I tossed the bill” – checkbook nearly $10,000 out of balance
- Son Daniel calls your office
- Sets appointment for parents to come in and talk to you
- He says, “Send me the bill”
THE OFFICE VISIT

- Joy, Elmer and Daniel arrive
- Joy and Elmer ask that Daniel join in the meeting
- J&E describe income and assets
- Concern is paying for long term care – in recognition that Joy’s memory is fading
- You agree to draft an asset preservation plan
- Set a follow up appointment
Based on these facts, can Joy enter into an attorney client relationship?

A. Yes
B. No
C. I need to know more
D. Only after an independent third party evaluation
QUESTION #2

• Who do you want as your client?

A. Joy
B. Elmer
C. Daniel
D. Joy and Elmer
E. All three of them
QUESTION #3

- If Joy and or Elmer are your clients, can Daniel Pay
  A. No – his paying creates a conflict of interest
  B. No- because his interests may different than his parents
  C. Yes
  D. Yes – but only if Joy, Elmer and Daniel agree after discussing what this means
QUESTION #4

What about Daniel being in the meeting?
A. It voids confidentiality
B. I’d be concerned about the impact on attorney client privilege
C. I’d allow it after discussing the risks, and confirming that it is what they want
D. I would insist on meeting with Joy and Elmer in private
QUESTION #5

A couple of days before the follow up appointment, Joy calls your office. She whispers into the phone, “I haven’t slept in two days, I can’t sign; if I do I will be a poor person at the mercy of my husband and children.” What do you do?

A. Talk with all three
B. Cancel the follow up appointment and refund their money
C. Ignore and let her sign if she wants to on the day
D. Ask her permission, to discuss with all three
QUESTION #6

• Joy refuses to sign and Elmer and Daniel say, “We are going to file for guardianship and force Joy to preserve assets for dad.”

• Is this a good case for guardianship
  A. Yes
  B. NO
QUESTION #7

- How can a mediation help this family?

A. A safe and neutral forum to assure all concerns are heard
B. Seeking common ground and understanding
C. Not at all
D. A & B
CASE #2

• Ben has practiced law for 50 years
• Loyal client base
• Taking on new clients
• Dozens of files with interview notes and checks – some six months old.
• Motion to compel action on pending litigation
• Admits that he has difficulty doing work
• Didn’t want to turn away friends and loyal clients
• Fear of losing reputation in the community
• Wife has great fear of disclosure of dementia in the community
#1 REBECCA AGREES TO CLEAN UP CASES, WHAT SHOULD SHE TELL CLIENTS?

A. Tell clients that Ben has dementia and she is taking over
B. Tell clients that Ben has suddenly retired
C. Tell clients that Ben is not well and ask for their consent for Rebecca to help
D. Don’t tell them anything, just do the work
E. Ben and Rebecca can meet jointly with all clients
#2: CLIENT SMITH WANTS TO MOVE CASE TO ANOTHER ATTORNEY, WHAT ARE THE OBLIGATIONS

A. Return the file
B. Refund unearned part of any retainer or advance fee payment
C. Maintain client confidentiality
D. Not represent opposing party on the same or a related matter
E. All of the above
F. None of the above
#3: BEN REFUSES TO STAY AWAY FROM THE OFFICE, YOU ARE ASKED ABOUT GUARDIANSHIP

A. Guardianship is the only way to stop Ben from endangering clients
B. The damage to his reputation in the community needs to be considered
C. Mediation may be a viable option
D. Less restrictive actions should be tried
E. All of the above
F. B, C and D
#3 MONA

- Long time client - estate and planning for incapacity
- Calls and wants to remove daughter Laura from documents and bank account
- Checkbook, Laura appears to be writing checks, some checks to Laura
- Laura drags her to a quack of a doctor
- $4,700 check to Fred Smith, a new neighbor who is helping Mona, explanation, he mowed grass and trimmed a tree
- Damage to car
- Missed appointment, appears confused
#1: WHAT DO YOU WANT TO DO BEFORE YOU MOVE FORWARD WITH CHANGES?

A. Call her daughter Laura
B. Ask to talk to Mona’s doctor
C. Talk to her bank
D. Ask Mona to bring Laura in for a conversation
E. Ask Laura to be evaluated by a professional
F. Some combination of these options
#2: IF YOU BELIEVE SHE IS BEING EXPLOITED, CAN YOU CALL ADULT PROTECTIVE SERVICES?

A. Yes – mandatory reporting
B. No – Mona said she didn’t want to report
C. No - breach of attorney client confidentiality
A. You can disclose because Mona didn’t tell you
B. You can disclose because it is necessary to carry out the legal work Mona has hired you for
C. You can use, but likely not disclose
D. You can discuss with Mona
CASE # 4: JACOB

- Jacob has advanced dementia
- Is unable to make and communicate choices or decisions
- Has been cared for at home by family
- Care needs are exceeding ability of family
- Power of attorney includes a clause that allows “gifts consistent with long term pattern of gifts and charitable giving.”
DAUGHTER

- Already moved half of life savings into an irrevocable annuity, naming self and brother as beneficiaries.
- Other half of savings into bank in name of daughter and son.
- Wants you to transfer home into her name.
- Tells you she will then admit Jacob to a skilled nursing facility.
- And asks you to apply for Medicaid on his behalf.
WHO DO YOU WANT AS YOUR CLIENT?

• A: Jacob
• B: Ellen
• C: Max
• D: Max and Ellen
• E: All of the above
• F: None of the above
ARE THESE GIFTS PERMISSIBLE UNDER THE POWER OF ATTORNEY?

A. Yes
B. No
C. Maybe – I need to know more
WHAT DO YOU NEED TO TELL THEM ABOUT THE GIFTS?

A. That there may be gift tax liability
B. That they have to fear a third party challenging the validity of the gifts
C. The gifts will create a period of ineligibility for Medicaid
D. That you are obligated to report to adult protective services
They refuse to disclose the house in Canada what can you do?

A. You must withdraw
B. You can tell them they are committing fraud and urge them to not apply without disclosure
C. You can file for them, you have no proof of the house in Canada, so you are not failing to disclose
D. You can report them for committing Medicaid fraud if they apply without disclosing