

■ **ELDER LAW – THE BIG PICTURE**

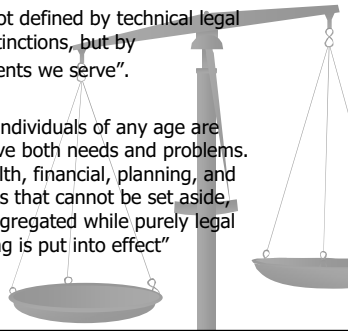
Edwin M. Boyer Esq.
Sarasota Florida

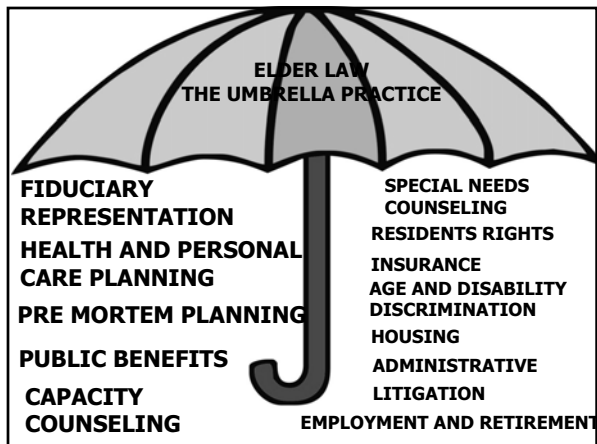
Prof. Rebecca C. Morgan
Stetson University College of Law
St. Petersburg Florida

What Is Elder Law

"Elder Law is not defined by technical legal distinctions, but by clients we serve".

"Elders, like individuals of any age are complex and have both needs and problems. They have health, financial, planning, and personal issues that cannot be set aside, deferred, or segregated while purely legal planning is put into effect"

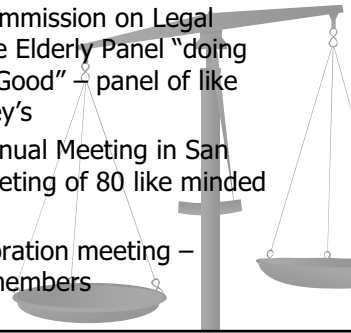




■ **DIVERSITY**

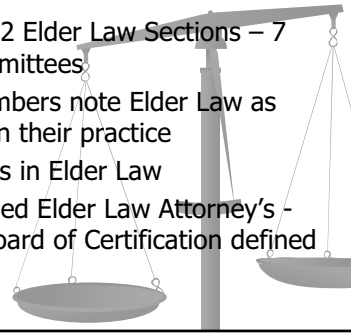
Defining Elder Law

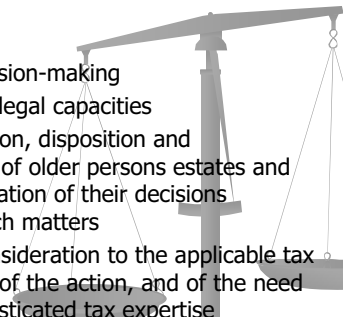
- 1984 – ABA Commission on Legal Problems of the Elderly Panel “doing Well by Doing Good” – panel of like minded attorney’s
- 1987 – ABA Annual Meeting in San Francisco – meeting of 80 like minded attorney’s
- 1988 – Incorporation meeting – NAELA – 130 members

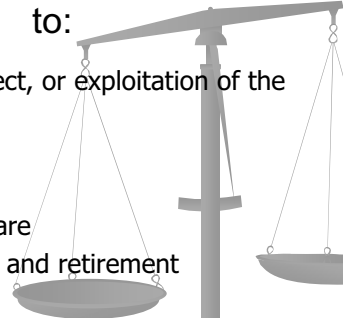


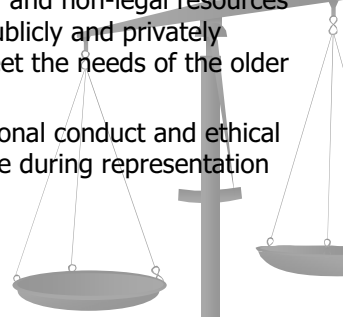
NAELA

- NAELA - 4,302 members – 26 State Chapters
- State Bars? – 32 Elder Law Sections – 7 Elder Law Committees
- 9,000 ABA members note Elder Law as concentration in their practice
- 3 LLM programs in Elder Law
- 10% are Certified Elder Law Attorney’s - 1993 (NELF) Board of Certification defined elder law



- The practice of counseling and representing older persons and their representatives about
 - The legal aspects of health and long term care planning
 - Public benefits
 - Surrogate decision-making
 - Older persons legal capacities
 - The conservation, disposition and administration of older persons estates and the implementation of their decisions concerning such matters
 - Giving due consideration to the applicable tax consequences of the action, and of the need for more sophisticated tax expertise
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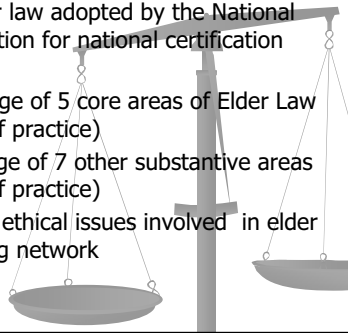
- Elder Law Attorneys Need To Recognize Issues With Respect to:**
- 1. Abuse, neglect, or exploitation of the older person
 - 2. Insurance
 - 3. Housing
 - 4. Long term care
 - 5. employment and retirement
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- And – Be Familiar With**
- 6. Professional and non-legal resources and services publicly and privately available to meet the needs of the older persons
 - 7. The professional conduct and ethical issues that arise during representation
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■ **TIRED YET?**

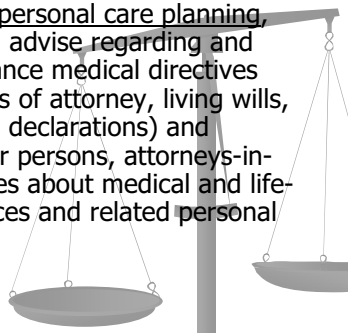
National Elder Law Foundation

- Definition of elder law adopted by the National Elder Law foundation for national certification (1993)
- In depth knowledge of 5 core areas of Elder Law (minimum 66% of practice)
- Working knowledge of 7 other substantive areas (minimum 17% of practice)
- Understanding of ethical issues involved in elder law, and the aging network



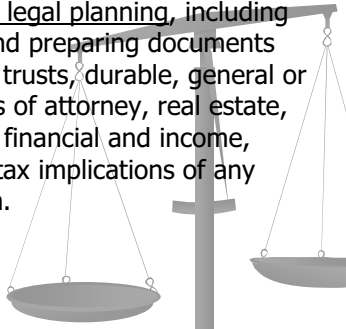
Core Areas

- (1) Health and personal care planning, including giving advise regarding and preparing, advance medical directives (medical powers of attorney, living wills, and health care declarations) and counseling older persons, attorneys-in-fact, and families about medical and life-sustaining choices and related personal life choices.



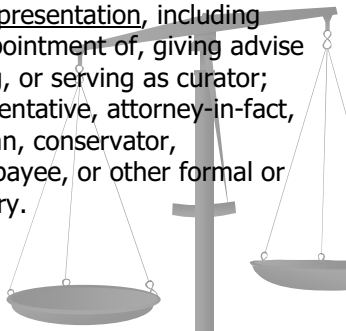
Core Areas

- (2) Pre-mortem legal planning, including giving advice and preparing documents regarding wills, trusts, durable, general or financial powers of attorney, real estate, gifting, and the financial and income, estate and gift tax implications of any proposed action.



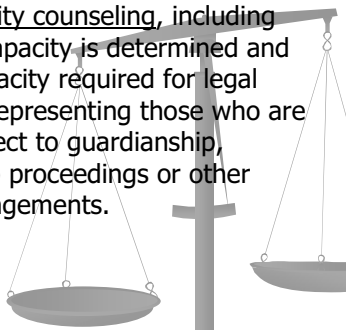
Core Areas

- (3) Fiduciary representation, including seeking the appointment of, giving advice to, representing, or serving as curator; personal representative, attorney-in-fact, trustee, guardian, conservator, representative payee, or other formal or informal fiduciary.



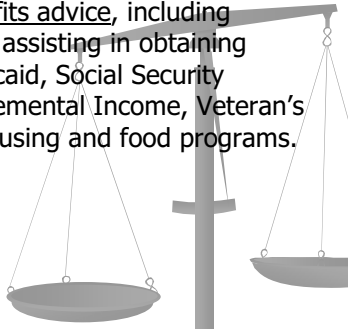
Core Areas

- (4) Legal capacity counseling, including advising how capacity is determined and the level of capacity required for legal activities, and representing those who are or may be subject to guardianship, conservatorship proceedings or other protective arrangements.



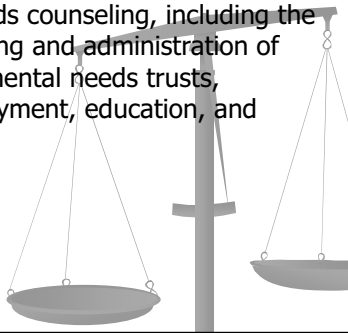
Core Areas

- (5) Public benefits advice, including planning for an assisting in obtaining Medicare, Medicaid, Social Security Benefits, Supplemental Income, Veteran's benefits and housing and food programs.



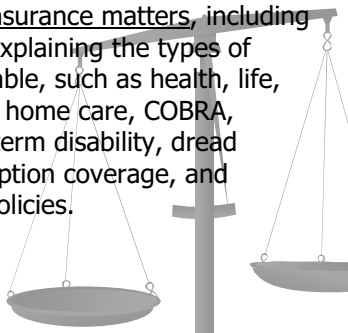
Other Areas

- (6) Special needs counseling, including the planning, drafting and administration of special/supplemental needs trusts, housing, employment, education, and related issues.



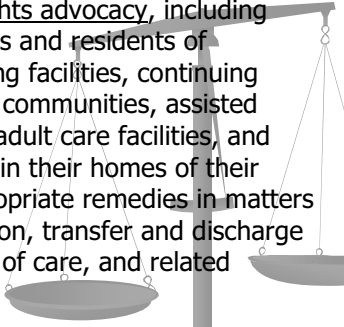
Other Areas

- (7) Advice on insurance matters, including analyzing and explaining the types of insurance available, such as health, life, long-term care, home care, COBRA, Medigap, long-term disability, dread disease, prescription coverage, and burial/funeral policies.



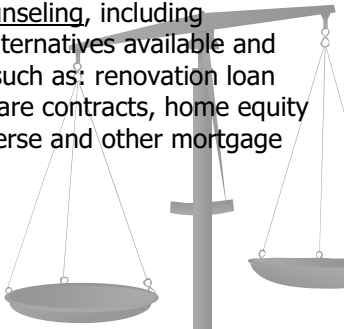
Other Areas

- (8) Resident rights advocacy, including advising patients and residents of hospitals, nursing facilities, continuing care retirement communities, assisted living facilities, adult care facilities, and those cared for in their homes of their rights and appropriate remedies in matters such as admission, transfer and discharge policies, quality of care, and related issues.



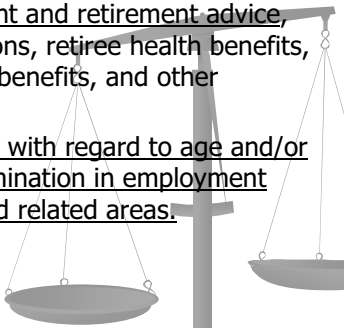
Other Areas

- (9) Housing counseling, including reviewing the alternatives available and their financing such as: renovation loan programs, life care contracts, home equity conversion, reverse and other mortgage options.



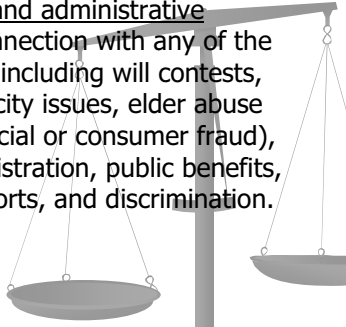
Other Areas

- (10) Employment and retirement advice, including pensions, retiree health benefits, unemployment benefits, and other benefits.
- (11) Counseling with regard to age and/or disability discrimination in employment and housing and related areas.



Other Areas

- (12) Litigation and administrative advocacy in connection with any of the above matters, including will contests, contested capacity issues, elder abuse (including financial or consumer fraud), fiduciary administration, public benefits, nursing home torts, and discrimination.



Elder Law Includes advice and counseling on Non-Legal Issues

- Respite Care, Day care
- Case management
- Community support services such as Alzheimer's support groups and training
- LTCOC referrals for nursing home issues
- How to select a nursing home or ALF
- Free and low cost medications
- Other community resources



Elder Law is Frequently Crises Based

- With lack of pre-planning, medical crises also give rise to other issues including guardianship, long term care placement, Long term care payment, possible spousal impoverishment.
- Abuse neglect and exploitation
- Family disagreements and conflict
- Nursing home resident's rights violations



Elder Law Involves Advocacy



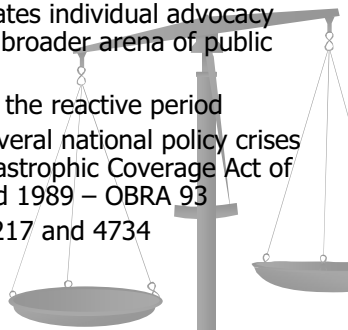
Client Advocacy

- Nursing home advocacy
- Abuse neglect and exploitation
- Health care advocacy
- Public benefits qualification
- Guardianship advocacy



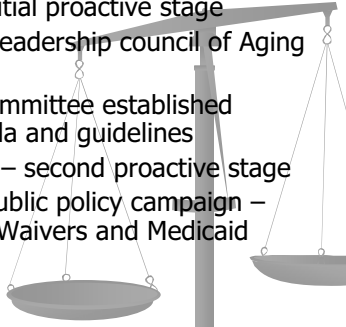
Organizational Advocacy

- NAELA – translates individual advocacy efforts into the broader arena of public policy
- 1988 to 1998 – the reactive period
- Response to several national policy crises
 - Medicare Catastrophic Coverage Act of 1988 – repealed 1989 – OBRA 93
- HIPPA section 217 and 4734



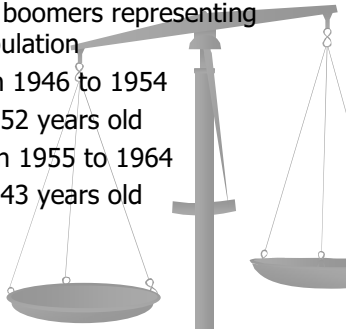
Organizational Advocacy

- 1998 – 2002 Initial proactive stage
- NAELA Joined Leadership council of Aging Organizations
- Public Policy Committee established proactive agenda and guidelines
- 2002 – present – second proactive stage
- Two pronged public policy campaign – Medicaid State Waivers and Medicaid Reform



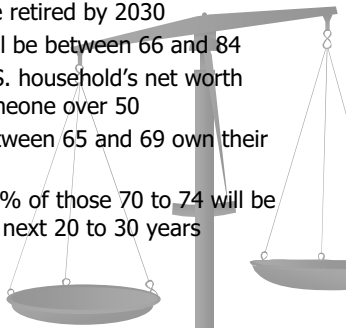
Elder Law Involves a Fear and Respect for Baby Boomers

- 76 million baby boomers representing 31% of the population
- 1st waive – born 1946 to 1954
- Currently 44 to 52 years old
- 2nd waive – born 1955 to 1964
- Currently 34 to 43 years old



Baby Boomers

- 9 out of 10 will be retired by 2030
- By 2030 1 in 5 will be between 66 and 84
- Today 70% of U.S. household's net worth controlled by someone over 50
- 81% of Those between 65 and 69 own their own homes
- Properties of 80.9% of those 70 to 74 will be transferred in the next 20 to 30 years



Baby Boomers

- Baby boomers now are the children of elderly parents
- They are caregivers and planners
- They will live longer and retire earlier
- By 2030 a significant number will be single
- 80% will be a family that receives income from pensions assets or social security
- 56% will rely on social Security for more than 1/2 their income

